

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

NATIONAL ASSOCIATION FOR THE)	
ADVANCEMENT OF COLORED PEOPLE,)	
INC., ET AL.,)	
Plaintiffs,)	May 8, 2018
)	
-versus-)	4:18-554
)	
)	Greenville, SC
CITY OF MYRTLE BEACH, ET AL.,)	
)	
Defendants.)	

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE A. MARVIN QUATTLEBAUM
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

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The proceedings were taken by mechanical stenography and
the transcript produced by computer.

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1 Tuesday, May 8, 2018

2 (WHEREUPON, court was called to order at 1:30 p.m.)

3 **THE COURT:** Please be seated. Good afternoon.

4 We're here on 18CV554 and, specifically, the
5 plaintiff's motion for preliminary injunction. First, I
6 want to thank everybody for coming to Greenville. I know
7 there was a desire to have this heard before Memorial Day,
8 and this was the only place we could have it heard within
9 that timeframe. So I hope that wasn't too big an
10 imposition, especially for folks who came from other
11 places in the lower part of the state, but we're glad to
12 have you here.

13 I would like to go over a few logistical things
14 beforehand. I hope that will help y'all out and help us
15 maybe plan how we're going to use the afternoon.

16 **THE COURT REPORTER:** Something is wrong with the
17 sound.

18 **THE COURT:** First, when you're speaking, Karen
19 Martin is our court reporter. We may --

20 **THE COURT REPORTER:** That's it. Turn that off.
21 I'm so sorry, Judge.

22 **THE COURT:** That's all right. You're fine.

23 **THE COURT REPORTER:** There's something in my ear
24 and I can't hear anything.

25 When you hit that green one, it went away.

1 **THE CLERK:** Is that better?

2 **THE COURT REPORTER:** Yes. Thank you.

3 Sorry, Judge.

4 **THE COURT:** Okay. Well, that was right on cue
5 because, obviously, it's important for her to hear
6 everything. And sometimes even when it's all people here
7 from the south, we get talking too fast. And we may slow
8 people down or tell you to just take it easy a little bit.
9 We're not trying to be rude, we just want to make sure
10 Karen can get everything that needs to be said.

11 **THE COURT REPORTER:** Thank you.

12 **THE COURT:** Let me say this, I have read and
13 re-read the briefs and the exhibits. It's been well
14 briefed and thoroughly briefed and we appreciate that. I
15 don't say that to discourage you from making any
16 presentation you want to make. Just realize the record
17 includes the submissions and we're familiar with those.
18 And as you figure out how to plan your time, I don't want
19 you to think if you don't bring something to the Court's
20 attention, we haven't looked at it. We've looked at
21 everything that's been submitted so far more than once.
22 So I want you to be aware of that.

23 Timing. As I indicated on our status
24 conference, we're going to go until 5:30. It's not like
25 I'm going to shut the lights off at that point. And if

1 you're done before then, no one here is going to be upset
2 with you. But we have dedicated a full four hours of
3 court time for this hearing.

4 Here's what I'd like to do. I'd like for three
5 hours of it to be the presentations of the parties.

6 That's because I have a number of questions I want to ask
7 and I think it'll take an hour or so to do that. That's
8 going to be cutting it kind of close. And I'd like y'all
9 to go for three hours. How you use your three hours
10 doesn't make any difference to us. You can make
11 arguments. I know people have witnesses. All that is
12 fine.

13 But let me say this, consider -- in general, I'd
14 like for there to be, you know, hour and a half for the
15 plaintiffs and hour and a half for the defendants. And
16 when you -- that's no problem when you're talking about
17 lawyer time. That's easy to monitor. But I'm going to
18 include cross-examination time in that. So just kind of
19 plan that as you do your direct exam and your argument
20 that I'm going -- if you use all that time up, you know,
21 I'm not going to say you can't cross-examine anyone, but
22 I'm going to restrict you on that. That way, we'll finish
23 around 4:30 and have time for the questions that, you
24 know, at least at this point I want to answer. Y'all may
25 answer them in the course of the day, but there'll

1 probably be some things that we have at the end.

2 In general, we'll take -- we'll get started here
3 in just a few minutes. You know, take a break roughly,
4 3 o'clock. If anyone needs one before, just raise your
5 hand. It's non-jury, so we'll accommodate everyone. But
6 in general, I'd like to go until about 3:00, then take
7 one, you know, roughly 4:30, so we all have a chance to
8 kind of be fresh for the full session.

9 Exhibits. Y'all have submitted, you know,
10 extensive exhibits. And I don't say that in a pejorative
11 way. And what I have done is Mr. Bostic, our courtroom
12 deputy, and Ms. Martin, our court reporter, have a copy of
13 the indexes that y'all submitted with your courtesy copies
14 with the notebooks. And here's kind of what I was
15 thinking about indexes, all those -- I mean, exhibits.
16 All those exhibits are part of the court record, of
17 course. They've already been submitted.

18 You know, the Fourth Circuit law on the
19 standards of evidence to be considered is out there. I'm
20 sure y'all are familiar with it. It's less than, of
21 course, the rules of evidence. I want to talk about the
22 motion that the plaintiffs filed in a minute. But, in
23 general, with that guidance from the Fourth Circuit, our
24 inclination is to allow the parties to refer to any
25 exhibits that were submitted. We don't need those

1 remarked. In fact, we don't want those remarked unless
2 that's going to be a big problem because we have that
3 index and we'd rather just stick with that.

4 So if y'all are referring to a document or any
5 other exhibit, please refer it by the numerical
6 designation in your submissions. You don't need to tender
7 it and go through the admission standards. Since we don't
8 have a jury here now, the Court's able to give appropriate
9 consideration or lack of consideration based on various
10 factors. But I don't want y'all to feel like you need to
11 go through that process since it's all in the record at
12 this stage.

13 If there's anything that does get submitted
14 through a submission process -- and I'm not encouraging
15 that, I'm not discouraging it -- but if that happens, we
16 have a procedure for giving those back at the conclusion
17 of the case. But we'll talk about that if it comes up.

18 Let me just say this, I think this is
19 understood. When I indicated just a second ago that I
20 will let you refer to any of the exhibits for purposes of
21 this hearing, that is for purposes of this hearing alone.
22 It's without prejudice for the parties to make appropriate
23 exhibits -- objections based on the rules of evidence as
24 the case proceeds. So I just wanted to be clear that
25 neither the Court's waiving nor any other party is waiving

1 the ability to raise more fulsome evidentiary objections
2 as the case proceeds from this point forward.

3 Let me now address the plaintiff's motion to
4 exclude. And I appreciate y'all doing that. I was aware
5 of the Fourth Circuit standard at the time. I wanted to
6 make sure if there were major issues, we addressed them.
7 I'm going to deny the motion to exclude. I think, first
8 of all, given the standard that we're talking about,
9 both -- yeah, I can give these things whatever weight they
10 desire. I think the -- that the videos, there's some
11 level of authentication in the affidavits already, so I'm
12 going to deny it as to that. As to the Charlottesville
13 document, I'm not going to exclude it, but I don't find
14 that particularly relevant. And you can spend time with
15 it if you want, but I'm not sure that would be the best
16 use of your time. So I'm not going to formally exclude
17 it, but I appreciate y'all bringing those issues to the
18 Court's attention.

19 Last thing, technology. I know y'all came in
20 and worked through some things with the court personnel
21 here. I hope that goes well. You never know when you
22 start that how it goes. So if we have an issue, we'll
23 take it up. But that's -- hopefully, that goes smoothly.
24 We have a monitor here and so we'll be able to see
25 everything and, hopefully, y'all will be as well.

1 With that said, unless there's something else
2 that the parties have, I'd like to proceed. We're on a
3 somewhat limited time. Is there anything else from the
4 plaintiff we need before we get started?

5 **MR. COLFAX:** Nothing further from the
6 plaintiffs, Your Honor.

7 **THE COURT:** From the defendant?

8 **MR. MICHAEL BATTLE:** Nothing from the defendant,
9 Your Honor.

10 **THE COURT:** Let me do this. Could y'all -- I
11 have -- I don't know everybody. So if y'all could just
12 introduce yourselves. And it may be that y'all know who's
13 going to do all the talking, it may be that you don't, but
14 if you could, before you start, just let us know who you
15 are so I can address you appropriately.

16 **MR. COLFAX:** Reed Colfax for the plaintiffs.

17 **MS. RAMCHANDANI:** Tara Ramchandani for the
18 plaintiffs.

19 **MS. ARANDES:** Good afternoon. Laura Arandes for
20 the plaintiffs.

21 **MR. SPENCE:** Good afternoon, Your Honor. Dorian
22 Spence for the plaintiffs.

23 **MR. WILLIAMS:** Willie Williams for the
24 plaintiffs.

25 **THE COURT:** Thank you. It's nice to have all

1 y'all here. I know some of you came from out of state and
2 from other parts of the state, so welcome to Greenville.

3 Yes, sir?

4 **MR. MICHAEL BATTLE:** Mike Battle, on behalf of
5 the respondent, I'll be doing the presentation. And James
6 Battle, my son, will be doing the questioning of the
7 witnesses.

8 **THE COURT:** Thank you both.

9 Mr. Colfax, if you'd like to proceed?

10 **MR. COLFAX:** Thank you, Your Honor.

11 Your Honor, we're here today on plaintiff's
12 motion to enjoin a traffic plan that is planned for Black
13 Bike Week of this year, a plan that is unjustified, is
14 unfair, and, ultimately, is unconstitutional.

15 It's unjustified because the plan has no
16 relationship to any of the goals that the city has
17 articulated for having the plan in the first place. In
18 fact, the plan does the exact opposite. It actually
19 interferes with the goals that the city has articulated
20 that it wants to achieve.

21 It's unfair because it makes it difficult for
22 the participants in Black Bike Week to attend the event,
23 to travel around the event, and to just generally enjoy
24 the event. It's the only event in Myrtle Beach that has a
25 traffic plan of this scope and nature.

1 And then finally, the evidence will show that
2 it's unconstitutional. The evidence shows that race was
3 on the mind of the decision makers when they designed and
4 implemented the plan. And the evidence will show that the
5 First Amendment rights of the attendees of Black Bike Week
6 are infringed by the traffic plan.

7 So I'm going to start by going through the
8 traffic loop and the one-way traffic plan that's in place
9 for Black Bike Week. But let me pause for a second and
10 say that if at any point I come close to an area where you
11 have a question, I'm more than happy to stop my
12 presentation and answer your question because that's
13 really the object of being here today.

14 **THE COURT:** Well, thank you for that. I tend to
15 be fairly active in questioning, but I'm going to do my
16 best to wait until the end because I want to give y'all
17 time to put in what you want. But thank you for saying
18 that. I'm going to more than likely make notes and wait,
19 but I may have questions if we come back at the end of the
20 session. But thank you for saying that.

21 **MR. COLFAX:** Very good. Thank you, Your Honor.
22 And let me also just to give a little bit of a preview of
23 what we plan on doing today --

24 **THE COURT:** Yes, sir.

25 **MR. COLFAX:** -- is I will give this

1 presentation, go through the background, some of the law,
2 and some of the facts that merely highlight some of the
3 aspects of the briefs that I know you have reviewed. And
4 then we're going to call two witnesses.

5 **THE COURT:** Okay.

6 **MR. COLFAX:** One witness is retired Police Chief
7 Willie Williams, who has attended a number of Black Bike
8 Weeks and Harley Weeks throughout the years going back as
9 early as 1999; he will tell you exactly, but something
10 like 17 or 18 Black Bike Weeks over the years. So he has
11 broad experience and will testify regarding that.

12 **THE COURT:** Yes, sir.

13 **MR. COLFAX:** Then we're also going to call David
14 Clarke, who is a professor and who has an expertise in
15 traffic engineering. And he examined both the Black Bike
16 Week traffic pattern back in the early 2000s as well as
17 Harley Week, and then again in 2017. So he'll give some
18 information in that regard.

19 **THE COURT:** And let me just on that note -- and
20 that's fine, the same issues that we talked about with the
21 exhibits I view with respect to expert witnesses or
22 consultants. I'm going to allow that. That's -- and in
23 fact I've read their declarations. You are welcome to
24 present as much of their background as you think is
25 helpful. But I have enough to allow them to testify on

1 the opinion basis for the purposes of this hearing without
2 prejudice to any side to deal with that later on.

3 **MR. COLFAX:** Thank you, Your Honor.

4 **THE COURT:** And in saying, you know, with any of
5 the witnesses from the defendant, I've looked at some of
6 the information and I'm trying to say y'all don't have to
7 go into as much background and qualifications as you might
8 do in front of a jury.

9 **MR. COLFAX:** Appreciate that, Your Honor.

10 So let me turn now to really what brings us
11 here, which is the traffic plan. And let me note that
12 there are more allegations in the complaint and challenges
13 to more aspects of what the city does during Black Bike
14 Week. However, for the preliminary injunction motion,
15 it's limited solely to the traffic plan. And what we're
16 seeking to enjoin is two aspects of the traffic plan.

17 One is the one-way restriction on Ocean
18 Boulevard from where it intersects with 29 North to where
19 it intersects with 29 South. And then the second aspect
20 is the traffic loop, where the ingress and egress from any
21 roads within the loop is severely limited for this 23-mile
22 loop.

23 So let me, if I may, step up here. I will try
24 to keep my voice up enough so that the court reporter can
25 hear me.

1 **THE COURT:** Sure.

2 **MR. COLFAX:** So this is the map of the traffic
3 loop and the traffic plan that's in place during Black
4 Bike Week. It's been in place from 2015 through 2017.
5 And the city has indicated that they plan on implementing
6 the exact same plan for 2018.

7 So the combination of the red and black lines
8 show the entirety of the loop. The red is the portion of
9 the loop that is within the jurisdiction of the City of
10 Myrtle Beach. Approximately, as you can see from the map,
11 about half of the loop. And then the black portion of the
12 loop is in Horry County.

13 Down here along the ocean, this is Ocean
14 Boulevard. At this corner here at the top is the
15 intersection with 29 North. That's where the one-way
16 restriction begins. And it ends down toward the bottom of
17 the map where Ocean Boulevard reconnects with Kings
18 Highway, which is this Business 17, which is the major
19 thoroughfare that's just off from the beach.

20 So the one-way portion of the traffic plan is in
21 place during the entirety of Black Bike Week. So from
22 6 a.m., I believe, on Friday to 6 a.m. on Monday, any
23 vehicles traveling on Ocean Boulevard are traveling south
24 and limited to a single lane.

25 And in addition, the turns on and off Ocean

1 Boulevard are significantly restrictive. There are
2 approximately six points along Ocean Boulevard where you
3 can either exit or enter Ocean Boulevard. I've put those
4 marks in there, they're not necessarily precise, of where
5 the entrances and exits are. But all of these other
6 cross-streets that intersect with Ocean Boulevard you
7 cannot make turns on during the entirety of --

8 THE COURT: And that's 24/7? That's not part of
9 the loop --

10 MR. COLFAX: That is correct.

11 THE COURT: -- restrictions, correct?

12 MR. COLFAX: That's correct. So one way, one
13 lane, limited to six to eight entrances and exits from
14 Ocean Boulevard.

15 THE COURT: Okay.

16 MR. COLFAX: 24/7 during the entirety of Black
17 Bike Week.

18 Then at 10 p.m. -- and I should say
19 approximately 10 p.m. because last year, in particular, we
20 had some drivers that were in the Ocean Boulevard area and
21 they were funneled into the loop prior to 10 p.m. So
22 approximately around 10 p.m., the city imposes the loop
23 restrictions.

24 THE COURT: Yeah, I read in the declarations,
25 one or two around 9:45; is that correct?

1 **MR. COLFAX:** That's correct. Once the loop
2 restrictions are in, they last from 10 p.m. to 2 a.m. on
3 Friday, Saturday, and Sunday nights of Black Bike Week.
4 All traffic that is seeking to get onto Ocean Boulevard is
5 funneled at this intersection with 29 North.

6 **THE COURT:** Okay.

7 **MR. COLFAX:** In this downtown area, that's the
8 only place you can get onto Ocean Boulevard. Those
9 entrances and exits that I marked earlier, those are shut
10 off. So now once you're on Ocean Boulevard, you must
11 remain on Ocean Boulevard, still one-way traffic, one lane
12 headed south. And then you are funneled all the way
13 around this loop, as you can see, pushed back out to 501.

14 And then here, I believe this is Dick Scobee
15 Road and Waccamaw Boulevard that's running parallel to
16 501, there is an ability to get out of the loop. So you
17 can go north, go east, and -- well, maybe not east,
18 actually west --

19 **THE COURT:** Okay.

20 **MR. COLFAX:** -- if you're going to get out of
21 the loop. If not, if you want to return to Ocean
22 Boulevard, then you have to stay in the loop all the way
23 back around until you come back to 29 North.

24 **THE COURT:** This may be clarified to your point
25 about going west. Is it your understanding that you

1 cannot turn right, so to speak, back into the -- within
2 the loop and make your way back down through one of those
3 six entrances?

4 MR. COLFAX: I believe, actually, you can get
5 out and get back into -- you can get back into the City of
6 Myrtle Beach. You cannot get in one of these entrances
7 back to Ocean Boulevard.

8 THE COURT: Okay.

9 MR. COLFAX: There is one way and one way only
10 onto Ocean Boulevard, and that's at 29 North.

11 THE COURT: Okay.

12 MR. COLFAX: So that's the situation from 10 to
13 2 every night. And that's the time when the significant
14 amount of activity is happening during Black Bike Week
15 where people are out at restaurants and clubs and so
16 forth.

17 So just to pick for a second about the practical
18 effect of the loop. So if you are staying in a hotel,
19 say, you're down at 9 South on Ocean Boulevard and you
20 want to go to a restaurant or a club or whatever, say, at
21 9 North, the only way to do that would be to walk or to
22 drive the entirety of the loop back to whatever it may be,
23 half a mile north of where your hotel is because there's
24 no way to go north on Ocean Boulevard in a vehicle.

25 So last year, we had some vehicles test the

1 length of time it would take to travel certain distances.
2 And so for Ocean Boulevard, just to take this stretch of
3 Ocean Boulevard from 29 North to 29 South, takes you
4 approximately an hour and a half, hour and 45 minutes.
5 And that was pre-loop hours, before the loop was even in
6 place.

7 Now, in comparison, during Harley Week, that
8 same trip would take 20 minutes, 30 minutes. And at the
9 peak time, the longest time measured during Harley Week,
10 it was about an hour and 20 minutes. The longest time
11 during Black Bike Week was approximately five hours just
12 to travel the length of Ocean Boulevard.

13 THE COURT: Is that the testing Mr. Clarke --

14 MR. COLFAX: It is.

15 THE COURT: That's in his declaration, that
16 testing?

17 MR. COLFAX: Exactly. Correct.

18 THE COURT: Thank you.

19 MR. COLFAX: So all of those times and exactly
20 the effect of the loop are in his declaration.

21 So what we see and what we have in the
22 declarations from a number of the participants of Black
23 Bike Week is that this traffic loop and the one-way
24 traffic plan significantly interferes with their ability
25 to enjoy the event.

1 And one of the things that comes up and is
2 particularly significant to them is when this traffic is
3 moving so slowly, they have to leave their bikes idling
4 and they overheat. So you will see in the declarations
5 that there are riders who say I just simply can't take my
6 bike out because I can't operate it because it overheats
7 as it sits there and idles.

8 So I won't go through all of the declarations
9 that we cited, but they're in the briefs and there are
10 numerous stories about the difficulties of the traffic
11 plan and what kind of pain really it causes for anybody,
12 whether it be a Black Bike Week attendee or anyone else
13 faces.

14 Of course, it's during Memorial Day Weekend. So
15 there are many more people in town than just folks
16 attending Black Bike Week.

17 So we also had Chief Brown, who is not here, he
18 was not able to come, but Chief Williams is here, who
19 submitted a declaration. And he talked about the fact of
20 having seen Harley Week and having seen Black Bike Week,
21 that the roads operate significantly better, more
22 smoothly, traffic moves better during Harley Week when
23 there is no real traffic plan in place. There may be some
24 limitations on ingress and egress from some side streets
25 on Ocean Boulevard. But as a general matter, there are no

1 significant changes to the traffic plan and traffic moves
2 much better.

3 And another thing that you'll hear from
4 Professor Clarke is that in the area -- in the Myrtle
5 Beach area, there are similar number of vehicles on the
6 road during Harley Week and during Black Bike Week. And
7 it's just because of this traffic plan and the reduction
8 of the volume of vehicles that can travel on Ocean
9 Boulevard in particular that creates this traffic
10 congestion that we see that leads to these very, very long
11 periods of time.

12 So to be clear, as I said, there are more --
13 we're challenging more than just the traffic loop in the
14 complaint as a whole. But in this preliminary injunction
15 motion, there are two things. One is to remove the
16 one-way restriction on Ocean Boulevard during the entirety
17 of Black Bike Week, and to eliminate the traffic loop on
18 Friday and Saturday and Sunday nights.

19 So I'm sure, Your Honor, you're familiar with
20 the preliminary injunction standard, so the familiar four
21 prongs. And let me just make one note about an argument
22 made by the defendants regarding a mandatory versus a
23 prohibitory injunction. The defendants suggest that this
24 is a mandatory injunction so we would face a higher
25 standard.

1 First, just to be clear on what it means for
2 what the standards are. For a mandatory preliminary
3 injunction, it's the same four prongs, like the excess
4 irreparable harm, public interest, balance of the
5 equities. But what the courts instruct is that the review
6 of those should be more searching when it's a mandatory
7 injunction.

8 **THE COURT:** The more searching eyes, apparently,
9 what I'm supposed to do if that were to apply. I'm not
10 really sure what that means.

11 **MR. COLFAX:** Exactly. And I've looked to see
12 what is the guidance of what does it mean to be more
13 searching and there's not a lot there.

14 **THE COURT:** We agree with that.

15 **MR. COLFAX:** Just have to take a closer look.

16 Now, with that being said, our position is this
17 is a prohibitory injunction. And the reason it's a
18 prohibitory injunction is because what we actually seek to
19 do is maintain the status quo in two ways.

20 One, the status quo is what the roads are 362
21 days of the year. 362 days of the year, for the most
22 part, with some events with some limited changes to the
23 traffic plans, there's no one-way restriction, there's no
24 traffic loop. So the status quo. The Thursday before
25 Black Bike Week, there's no traffic restrictions. And

1 it's the city that wants to change that and put the
2 traffic plan into place.

3 Second, even if one were to assume that the
4 status quo is that every year during Black Bike Week we
5 put in a traffic plan, what the plaintiffs seek -- are
6 challenging is actually all of those traffic plans, the
7 entirety of this policy starting back in 2015 of putting
8 this traffic plan in place. So we want to return to the
9 status quo prior to 2015 when there was no traffic plan in
10 place for Black Bike Week.

11 So either way, this is properly seen as a
12 prohibitory rather than mandatory injunction. Even if it
13 were a mandatory injunction, it just simply changes the
14 standard to the more searching review.

15 So let me turn to likelihood of success on the
16 merits. We move under two claims that plaintiffs are
17 making. One is a combination of the equal protection
18 clause and 1981, which is essentially the same, and the
19 First Amendment.

20 So I'll start with equal protection clause and
21 1981. There are two things that plaintiffs have to show.
22 One, that they are being treated differently from others
23 that are similarly situated; and two, that the
24 differential treatment is motivated, at least, in some
25 part by race.

1 Start with similarly situated.

2 THE COURT: So let me just stop you. On that
3 first part, may be semantics, but it would seem to me it's
4 three points. It's different treatment, similarly
5 situated, racial intent. You combined the first two, but
6 it's the same thing. Are we on the same page with that?

7 MR. COLFAX: We are on the same page.

8 THE COURT: Okay.

9 MR. COLFAX: I found that when trying to
10 articulate it, the differential treatment and the
11 similarly situated bled together. But you're absolutely
12 right that --

13 THE COURT: I'm not sure there's as much dispute
14 about different treatment as there is the other prongs,
15 but we'll see.

16 MR. COLFAX: That's right. So I will just
17 briefly note the differential treatment. It's really a
18 repeat of what I've talked about. This traffic plan is
19 unique in Myrtle Beach. Nothing like it appears at any
20 other time during the year. And I'll talk a little bit
21 later about some of the other events that the defendants
22 raise.

23 And then it is treated differently to -- as
24 compared to Harley Week. At Harley Week, which is the
25 similar event that happens the weekend before, there is a

1 significant amount of data and information that we have
2 collected that shows that the number of attendees are
3 similar. Their behaviors during the weekend are similar.
4 Basically, what they do while in town is similar.

5 So let me bring this up. And I'll start with
6 hotel occupancy data. So this is cited in our brief. We
7 don't have a chart in our brief, but this is the data that
8 is cited. And if you look, the blue bar graphs are Harley
9 Week, the orange are Black Bike Week. And this is the
10 percentage of occupancy of hotels in the Myrtle Beach
11 area.

12 As you can see, there's a little bit of
13 fluctuation from one year to the next showing from 2014
14 through 2017. But for the most part, the level of
15 occupancy, which is a solid measure of how many
16 out-of-town people are in town, they are very similar
17 between the two events. And in fact, in 2016 and 2017,
18 the occupancy rates were actually lower for Black Bike
19 Week.

20 **THE COURT:** What's the geographic area that that
21 covers?

22 **MR. COLFAX:** I believe it is the City of Myrtle
23 Beach is where they're collecting the data.

24 So what this -- this is one piece of evidence to
25 show these two events are similar.

1 And then we also have Chief Brown, who went to
2 both Harley Week in 2017 and Black Bike Week in 2018, and
3 he observed.

4 THE COURT: '17.

5 MR. COLFAX: I'm sorry, yes, '17. And he
6 observed what was happening during the two weekends. And
7 as you can see from his observation, he concluded there
8 are similar numbers of motorcyclists and others drivers.
9 Driving habits were similar. He doesn't suggest that the
10 driving habits were perfect, but if there were violations
11 in one weekend, there are similar violations the next
12 weekend. And significantly, if there was some difference
13 in the number of people, the level of difference would not
14 be one that would justify a traffic plan or a different
15 traffic plan to be put in place. So again, another
16 observation showing that the two weekends are similar.

17 And then finally, we can't ignore what Judge
18 Wooten found back in 2005 -- and that's a little small,
19 but hopefully you can read it there -- is that Judge
20 Wooten said it could not be seriously disputed that the
21 Black Bike Week visitors are being treated differently
22 than the Harley Week visitors. And the plaintiffs have
23 presented credible expert testimony that there were no
24 significant differences that warranted the differences in
25 traffic plans. So, again, Judge Wooten, having an even

1 fuller record, I acknowledge it was back in 2005, but the
2 city has not come forward and said that there are
3 significant differences in how these events are between
4 now and back in 2005.

5 **THE COURT:** You said something I wanted to make
6 sure -- you said a more full record?

7 **MR. COLFAX:** That's correct. So the case back
8 in -- was originally filed, I believe, in 2003 immediately
9 after Black Bike Week. So they had approximately a year
10 of discovery before the preliminary injunction motion was
11 filed and ruled on. And it was ruled on immediately
12 prior --

13 **THE COURT:** Right, the deposition transcripts
14 referenced in that order, for example, that presumably
15 haven't happened in this case.

16 **MR. COLFAX:** Exactly. Exactly.

17 **THE COURT:** Okay. I understand.

18 **MR. COLFAX:** And then, finally, on this
19 similarly situated point is that we don't see any evidence
20 cited by the defendants regarding any data that would
21 suggest that these two events are significantly different.
22 In fact, the only real evidence we have from the
23 defendants is from bystanders, people who, you know,
24 had -- were simply visiting the two weekends or have a
25 business and observed the two weekends, but in no means

1 qualified like Chief Brown or Professor Clarke to actually
2 do an empirical analysis comparing the two weekends. So
3 that's Harley Week. One event that's similarly situated
4 to Black Bike Week. And it's the best corollary. No
5 doubt about it.

6 But there are other events that happen in Myrtle
7 Beach where there are significant crowds in place that
8 don't have major traffic plans. July 4th, they have the
9 Sun Fun Festival. Labor Day is large. They have another
10 Harley Weekend in the fall, the Harley Rally in the fall.
11 Again, similar events, large numbers of people in town
12 traveling on Ocean Boulevard. It's obviously a
13 destination in Myrtle Beach, yet no traffic plan.

14 In response, the defendants talk about these few
15 other events that happen in Myrtle Beach that -- where
16 there's some change to the traffic pattern. And I can say
17 this originally came up when we had -- before you had the
18 case, Judge Coggins had the case. As you know, it has
19 passed through a few judges before landing on your desk.

20 **THE COURT:** We're glad to have y'all. I don't
21 want to give any impression that other people won't. I
22 don't think that was the case, but we're glad to have you
23 here now.

24 **MR. COLFAX:** We recognize that we sometimes get
25 bounced around for whatever reason. Judge Coggins asked

1 the question during just sort of a status conference, are
2 there any other events where you have a one-way
3 restriction or closed roads? And the counsel for the city
4 stated, yes, we have the marathon, we have the country --
5 the Carolina Country Music Festival, and they added a
6 couple more in their brief, the MLK Parade and the Jazz
7 Festival.

8 All of the -- true, right, some roads are closed
9 during those events, but those are events that happen in
10 the road. The marathon, the runners are in the roads so,
11 obviously, the streets necessarily have to be closed.

12 The Carolina Music Festival, the spectators and
13 the stage are basically on top of Ocean Boulevard. So you
14 can't have traffic passing through. So the roads around
15 the Carolina Music Festival, just that block around, are
16 closed.

17 So you don't have to be a traffic engineer, an
18 expert in any of this to understand, yes, you have to
19 close those roads in accordance to that's where the
20 activities are happening in the street, nothing like
21 what's happening in Black Bike Week.

22 It's not as if the parade -- there is a parade
23 happening on Ocean Boulevard. And the marathon, as soon
24 as the runners pass, the roads reopen.

25 Black Bike Week, that one-way restriction, 24/7

1 for the entire period of time. So just, they are not
2 comparable. And even if they were comparable, Black Bike
3 Week is still being treated differently because of the
4 scope of the traffic plan that is put in place.

5 So you've got the differential treatment being
6 the only traffic plan that's put in place, that scope, and
7 you have similarly situated, in particular Harley Week as
8 well as these other events.

9 The similarly situated also has to be viewed in
10 the context of the difference in the action that's being
11 challenged. This is not similarly situated as, say, in
12 the employment context where two people are applying for
13 the exact same job, so they could just compare their
14 qualifications straight up.

15 This is a question of is there a difference
16 between these two events that would justify a plan like
17 this for Black Bike Week and virtually no plan at Harley
18 Week? Even if you see some differences between the two
19 events, and Professor Clarke will describe this more, you
20 would need a magnitude of difference between those two
21 events to justify the magnitude and difference in the
22 traffic plan. So just merely saying, yes, they are
23 different would not be enough to take them out of the
24 similarly situated box of where they belong.

25 Okay. So you've got differential treatment,

1 simply situated, then you turn to is this motivated by
2 race? And as we described in our brief, courts typically
3 use the Arlington Heights factors to assess, and
4 particularly in municipal government's decisions, was it
5 based in some part on consideration of race?

6 So the first factor that courts typically look
7 at is is there a disproportionate effect on a protected
8 class? And here, there's really no dispute about it.
9 Everybody agrees that Black Bike Week is the one
10 predominantly African-American event that happens in
11 Myrtle Beach during the year. And of course, we know
12 there's also no dispute it's the one event that has a
13 traffic plan of this scope. So it's just simply not -- so
14 the harms that are created by the traffic loop are
15 disproportionately borne by African-Americans as compared
16 to whites who are attending the vast majority of other
17 events during the year, including Harley Week.

18 After looking at the disproportionate effect,
19 then the courts look at the history. What is the history
20 of the action that's being challenged? And here, the
21 current plan, what is proposed to be imposed in 2018
22 cannot be divorced from its original conception, which was
23 back in the early 2000s, and which was the traffic plan
24 that Judge Wooten found was likely -- under the
25 preliminary injunction standard, likely motivated by

1 considerations of race. So he talks both about the
2 statements that he reviewed from City of Myrtle Beach
3 officials, that they considered and discussed when
4 creating the Black Bike Week traffic plan and that they
5 were seeking to discourage the predominantly
6 African-American visitors from attending the Black Bike
7 Week plan. And as the court states at the end, the court
8 concludes that race was a motivating factor when the issue
9 of traffic plans was decided.

10 True, traffic plan went on hiatus after this
11 preliminary injunction ruling. There was a consent order
12 and traffic plans for Black Bike Week and Harley Week were
13 the same and then it expired. A few more years pass and
14 then they bring it back. And they bring it back in a way
15 that is significantly more restrictive than the plan that
16 Judge Wooten saw. And just that passage of time doesn't
17 divorce this plan, which had aspects which are similar to
18 the one-way traffic plan along Ocean Boulevard. You can't
19 divorce it from what happened back in the early 2000s.

20 So Judge Wooten's finding back in the early
21 2000s that this was motivated by race has to be seen to
22 infect what's happening today when the exact same plan or
23 aspects of today's plan are exactly the same thing that
24 was happening in the early 2000s.

25 Now, the defendant's response is the Fourth

1 Circuit, right? That the Fourth Circuit, I think, on
2 maybe a week or ten days got a motion to stay the
3 preliminary injunction motion and granted that motion.
4 The defendant's position is that essentially wipes out
5 Judge Wooten's decision. But, of course, as we pointed
6 out and easy to see, the Fourth Circuit granted the stay
7 but explicitly said expressed no view as to the ultimate
8 merits of the case.

9 So you have Judge Wooten, who had a somewhat
10 developed record. He went through that record. He made
11 his decision concluding that it was likely motivated by
12 race. He talked about what the statements made -- what
13 the statements made by the city officials meant and so
14 forth.

15 And then the Fourth Circuit, for whatever
16 reason, which, of course, we don't know, we can speculate,
17 but we don't know, they stayed the preliminary injunction
18 motion but with no comment on the merits. That does not
19 by any means void the findings of Judge Wooten. And those
20 findings of Judge Wooten that there was discrimination in
21 the picture when that original traffic plan was created,
22 that's still effective even after the Fourth Circuit
23 decision.

24 **THE COURT:** So let me stop you. There's one
25 thing I planned to talk about at the end, but since it's

1 right up here, I read both sides' positions on that. And
2 quite frankly, I've got questions for both of you about
3 your positions.

4 The defendants, you're right, talked about the
5 stay as if it was, you know, gone to the merits, despite
6 the second paragraph there. But are you saying that -- I
7 don't understand your position that it, you know, has no
8 effect on the order. I mean, it is stayed and it is a
9 higher court. What's your authority for saying an order
10 that stays an injunction -- you know, sounds like you're
11 almost saying it should be disregarded as to the findings
12 that were -- the district court made.

13 **MR. COLFAX:** Well, so to start with, the
14 preliminary injunction order with or without the Second
15 Circuit -- with or without the Fourth Circuit wouldn't, of
16 course, be binding on you. It would just be something --

17 **THE COURT:** I agree with that for sure. So I'm
18 not suggesting either the stay or the district court's
19 binding on this Court. But both sides have talked about
20 it so I'm trying to figure out the authority for the
21 position you articulate.

22 **MR. COLFAX:** Sure. So our position is that if
23 you look at the evidence Judge Wooten reviewed and the
24 steps he took to come to that conclusion that race was in
25 the picture are persuasive. And we will reintroduce and

1 talk again about those very same statements that were
2 behind the original plan. And we will present them to you
3 as we have in our preliminary injunction and say, just as
4 we persuaded Judge Wooten over ten years ago, these
5 indicate that race was in the picture, right? Our
6 position is that so, too, should you conclude that race
7 was in the picture based on those same statements. And
8 that Judge Wooten's analysis is persuasive in that the
9 Fourth Circuit didn't say he got it wrong. Of course,
10 they didn't say he got it right. All we know is they're
11 staying the preliminary injunction and we don't know why.

12 **THE COURT:** I've got you. You would agree that
13 we have a different injunction standard in place in 2018
14 than we did back in that time period, correct?

15 **MR. COLFAX:** That may be right. Though, again,
16 it's -- we're less of citing Judge Wooten for the
17 proposition that an injunction should issue as sort of the
18 alternate decision and more of, you know, see what he
19 looked at --

20 **THE COURT:** I appreciate that.

21 **MR. COLFAX:** -- and what his analysis was on
22 those subparts of the analysis.

23 **THE COURT:** I understand. Thank you.

24 **MR. COLFAX:** Of course, our analysis doesn't
25 just look back to the past, the original creation of the

1 traffic loop. I'm sorry this is a little bit small.
2 Maybe I can get a little bigger on some of these.

3 THE COURT: That's okay.

4 MR. COLFAX: So these are more recent statements
5 by city officials, all cited in our briefs, that show that
6 the goal -- the concern maybe of the city is that there
7 are bad people in town. Warren Gall calls them, A bad
8 element.

9 THE COURT: Weren't most of these after 2014,
10 immediately after?

11 MR. COLFAX: Most of these were after, exactly.
12 Most of these were immediately after 2014, which is what
13 led to this traffic loop being in place. So, really, if
14 you want to think about what were the city officials
15 thinking, it is what happened after 2014. And I'll talk a
16 little bit about -- of course, the city makes a
17 significant deal out of the fact there was violence during
18 the 2014, but that doesn't make this -- doesn't justify
19 statements like we are going to squash that one next year.
20 This is a bad element. You know, John Rhodes saying,
21 We're trying to move people outside of the city. And then
22 again, he says it again, We're trying to move people
23 outside the city limits of Myrtle Beach.

24 All of these statements are, one, they're
25 characterizing the participants of Black Bike Week in this

1 way, that they're bad people. Two, they are talking about
2 trying to get these people outside of the City of Myrtle
3 Beach. And very similar to the statements that were made
4 back in -- when the original plan was put in place, right,
5 we have a bad element that we want to keep out of Myrtle
6 Beach.

7 And it's worthwhile thinking back to what Chief
8 Brown talked about in his declaration, what Chief Williams
9 will talk about in his testimony, that the behavior of the
10 individuals that are in town for Black Bike Week is not
11 particularly dissimilar from the behavior during Harley
12 Week or other events during the year. So other than the
13 nature, right, the race of the participants, there's no
14 real explanation for why the city officials are
15 characterizing this group of people during Black Bike Week
16 in the way they are.

17 Now, courts typically often look at -- when you
18 have municipal decision makers making decisions, the court
19 wants to look at what's happening around, what are the
20 influences, are they capitulating to what's happening and
21 what others are saying? And the statements by the public
22 are even stronger than the city officials, maybe there's a
23 little bit less of a screen, right, talking about biker
24 trash, a thug fest. And it goes on that they're trying
25 to, you know, make sure that, you know, they don't come

1 into town and act like a bunch of animals and so forth.

2 So again, putting the city officials' decision
3 in context with all of these comments that are coming to
4 them -- and these comments as we talk about in our brief,
5 right, are being forwarded to city council. They may come
6 to the public information officer. They're being
7 forwarded to city council for consideration. The city
8 information officer is engaging with these people --

9 **THE COURT:** I read those emails in the
10 submissions.

11 **MR. COLFAX:** So the statements go on. So that's
12 the history in which we have to judge this decision to put
13 the traffic plan into place.

14 Another factor that's looked at under Arlington
15 Heights is is there a departure from the normal
16 procedures? And what we see is that there was, you know,
17 essentially, a very -- there is a rush to a decision to
18 put the traffic plan into place and there was no real
19 process at all.

20 Apparently, there was a summit that was held.
21 But there was no, you know, analysis of what was needed to
22 address, whatever issues the city was trying to address,
23 how a traffic plan at all would address those issues, and
24 how this traffic plan in particular would address those
25 issues, right? No data, no analysis. A citation to a

1 Federal Highways Administration manual that talks about
2 national level events when you have a visiting
3 international dignitary or the Superbowl. They don't
4 even -- aren't even citing to the manual that's in place
5 that talks about motorcycle rallies specifically and the
6 types of information you would review and the type of
7 analysis you would do before implementing a traffic plan
8 like this.

9 And then on top of that, it's three years now,
10 right? We have three years of experience with the traffic
11 plan. And again, you don't see anywhere in the city's
12 briefing anything about an analysis they did during the
13 events, try to collect data, try to figure out is this
14 working, right? Instead, they just assume, if the one-way
15 happens and the loop happens, that's good enough. We've
16 been successful. And then, finally, even after the events
17 have concluded, they haven't gone back to determine is
18 there -- is this actually achieving the goals we're trying
19 to achieve?

20 So you have a departure from the procedures we
21 would expect. You have it disproportionately affecting
22 African-Americans. And you have a history of comments
23 that are codes for -- or at least suggestive of
24 discrimination being in the picture.

25 So those are sufficient at this stage here on

1 preliminary injunction to conclude, yes, there is a
2 likelihood of success on the equal protection claim.

3 Similarly, on the First Amendment, there are
4 three elements you have to prove for a First Amendment
5 claim. Plaintiff's actions constitute speech, defendant's
6 actions infringe on that speech, and it's not narrowly
7 tailored to accomplish some compelling state of interest.

8 There's really not a lot of dispute on the first
9 prong, the plaintiff's action constituted speech. We have
10 submitted substantial number of declarations about how
11 people are coming into town to celebrate their black
12 culture and motorcycles. And this event is sponsored by
13 and put together by Atlantic Beach, historically
14 African-American town, and very purposefully inviting
15 African-Americans with their motorcycles to come into town
16 and celebrate that culture. And that's what happens.

17 So I won't go through all the declarations. I
18 have some of them pulled out here, but they're all cited
19 in the brief.

20 **THE COURT:** I've read those and I appreciate
21 that. You're welcome to go through them, but I just want
22 you to understand as you decide how to use your time, I
23 have read them. But feel free to point out anything you
24 want to point out.

25 **MR. COLFAX:** I don't want to point out anything

1 other than there's a theme, right, of black culture and
2 motorcycle culture. And it's very different from the
3 cases cited by the defendants, right? The cases cited by
4 defendants, Shank, American Motors Association, they
5 relate to motorcycles, but there's no expression, right?
6 It's people wanting to ride in a park, right? There's a
7 ban on being able to ride in the park, they want to ride
8 their motorcycles in a park. Not that they're gathering
9 for any particular purpose, they're just riding in the
10 park.

11 Another case involves riding a motorcycle
12 without a helmet, right? A challenge to those laws saying
13 that interferes with -- infringes on my First Amendment
14 rights. But again, there's no expression of anything.

15 **THE COURT:** Is there anything -- one thing I --
16 I can't recall, was there a particular event in Myrtle
17 Beach where -- that the celebration or expression of that
18 culture was particularly pronounced? Or is it your
19 position that it's the whole weekend is geared toward that
20 as one of its things?

21 **MR. COLFAX:** It is really the whole weekend.
22 And that's what it's advertised about and that's the
23 concept behind it. Let's come and sort of celebrate the
24 fact we're black motorcyclists.

25 **THE COURT:** Did you submit -- I remember one

1 document that I recall that sounded a little bit like a
2 summary. I can't remember the year. You mentioned
3 advertising. And I don't recall advertising related to
4 the event on that point. I think there was one document,
5 but I can't really recall exactly what it was.

6 **MR. COLFAX:** Right, I don't think there is any
7 sort of advertising submitted on that point. It's much
8 more of the participants themselves talking about why
9 they're coming.

10 **THE COURT:** Okay. All right. Thank you.

11 **MR. COLFAX:** And the point of it.

12 So then once you have expressive activity, the
13 question is do the defendants' actions infringe upon that
14 activity? And again, we go back through the stories.
15 There are ample stories of how difficult it is to move
16 around with the ultimate result being I'm not coming,
17 right? So people are discouraged from even coming. And
18 what you see from some of those comments that I brought up
19 in the context of race discrimination is we want to get
20 these people out of town. That's what the city officials
21 are saying, which, of course, interferes with their
22 ability to express themselves.

23 So for both equal protection and the First
24 Amendment, once you establish that, the substance of it,
25 then the question becomes is there some compelling state

1 interest that this traffic plan can achieve and is
2 narrowly tailored to achieve that goal?

3 So there are different concepts that have been
4 brought up by the city about why we have the traffic plan.
5 And one theme that comes up over and over again is that we
6 want to keep traffic moving. Right? Our compelling state
7 interest is keep traffic moving. It limits the
8 interaction between the motorists and pedestrians and so
9 forth. And obviously, we can all agree that everybody is
10 in a better mood when they're not sitting in traffic and
11 traffic is moving. So plaintiffs have no quarrel with
12 that concept, to keep traffic moving.

13 So you see it in, you know, the city's
14 ordinances. They talk about keep the traffic moving.
15 Chief Prock, who I understand we'll hear from later today,
16 says that when they held this summit, that they brought in
17 folks from other jurisdictions, talked about Black Bike
18 Week and what they should do, she says, and this is the
19 bottom quote here, The consensus was that to improve
20 public safety, we have to keep pedestrians and vehicular
21 traffic moving at all times. Fine. But it doesn't do
22 that. And after three years, it is more than apparent
23 that this one-way plan and the traffic loop has exactly
24 the opposite effect of keeping traffic moving.

25 You can go back and think about the loop. The

1 travel times that Dr. Clarke measured, people are sitting
2 on Ocean Boulevard for hours. Every single one of the
3 declarations at some point, whether it's our declarations
4 or even defendant's declarations, people who were in
5 Myrtle Beach say traffic congestion is a nightmare and we
6 all sit there affected by the loop. So if the goal is to
7 keep traffic moving, that's not the solution. That's not
8 the way to achieve it.

9 Another goal that they talk about is violence.
10 And in 2014, there were shootings. Okay. It happened
11 inside and outside a hotel on Ocean Boulevard, the primary
12 shootings. And you know, the vast majority of what the
13 city talks about when they say -- when you ask why this
14 plan, they talk about that violence. So there are a
15 number of problems with that with the linkage.

16 First, as an initial matter, of course,
17 plaintiffs don't dispute the City of Myrtle Beach has an
18 interest in preserving public safety, and preventing
19 violence like what happened in 2014 is critical. But
20 there's no linkage between that type of violence and this
21 traffic plan. There's no analysis, no data, no expert
22 testimony of saying you put in a traffic plan like that,
23 you're going to reduce violence. So there's no linkage
24 between the two. And the city's own data that they
25 submitted with their brief establishes that there really

1 is no linkage.

2 So we have the data of serious crimes reported.
3 This is all that the city has given us related to any
4 analysis of crimes. So it goes back to 2007. And yes,
5 you can see it goes up and down. But two of the lowest
6 years are 2010, 2009 -- or 2011. 2011, there was no
7 traffic plan in place. There is a little bit of spike in
8 2014. But then they put the traffic plan in place and it
9 doesn't drop significantly at all. In fact, it stays
10 almost as high as any level it's ever been in Myrtle
11 Beach.

12 So again, even if you thought back in 2015,
13 let's put in a traffic plan, that will help reduce
14 violence and crime, but then you see these numbers come in
15 and see nothing's changing, there's no significant change,
16 then why the traffic plan?

17 And, you know, the same analysis can be done of
18 other things that they cite, right? They talk about
19 response times. Again, they fluctuate a little bit, but
20 they're relatively small changes from year to year.
21 Response times from Horry County, the same. Traffic
22 accidents, again, a spike in 2014, but the measure of what
23 happened before the traffic loop and after the traffic
24 loop is relatively similar.

25 So the key is the city has to say -- articulate

1 their compelling state interest and show how this traffic
2 plan is narrowly tailored to it. And what the evidence
3 clearly establishes is that there's no linkage, let alone
4 a narrowly tailored linkage between the two.

5 **THE COURT:** On that point, do they have to --
6 I'm trying to ask you if their -- if the question on
7 narrowly tailored depends on effectiveness. I appreciate
8 your position. And one way of arguing that is that the
9 measures taken aren't effective relative to the goals
10 pronounced. Does that mean by definition that it's not
11 narrowly tailored? Or can they be -- I'm not saying they
12 are, I know you have a different position. But if they're
13 doing their best to address those things and they simply
14 don't do it as well as they could, does that equal, you
15 know, absence of being narrowly tailored?

16 **MR. COLFAX:** I think there's a two-part answer.
17 There are two ways the city could have done this. Before
18 the traffic plan, they could have come in with a true
19 comprehensive analysis and described this is how a traffic
20 plan could deal with this issue we see during Black Bike
21 Week or any other weekend. We did the analysis, but we
22 don't see that. Right? So there was no before-the-fact
23 analysis.

24 **THE COURT:** Okay.

25 **MR. COLFAX:** And so I think that if you had that

1 and you could put on a persuasive case, you know what, a
2 traffic plan could, you know, in the abstract could really
3 achieve this compelling state interest, then I think
4 you're -- for at least some time, I think you're point is
5 correct.

6 But then even if you had done that, you're in
7 your now fourth year and you say, you know what, our
8 expert said this was going to work, but nothing is
9 happening, no change has been made. Then at some point,
10 you have to say, this is not working, right? Even though
11 we thought it was narrowly tailored to address the issue,
12 it's not because it's not actually having the predicted
13 effect.

14 So really, they fail at both ends. They didn't
15 do the analysis at the beginning. And there is no --
16 nothing from the results that suggest that it's actually
17 working.

18 All right. So I'm probably using more time than
19 I had anticipated.

20 **THE COURT:** No, and I've interrupted you some.
21 But I mean, you're right at about 35 minutes to do -- to
22 complete doing testimony and cross-examine.

23 **MR. COLFAX:** Exactly.

24 **THE COURT:** And I won't hold you to some of that
25 because I've interrupted some, but just realize that time

1 period.

2 MR. COLFAX: Well, I think what I will do now is
3 to stop. I've gone through the substance. Of course,
4 there's irreparable harm, balance of the equities, and
5 public interest. But I think a lot of those ride from do
6 you have a constitutional violation. So the first part is
7 the key.

8 THE COURT: Right.

9 MR. COLFAX: And we'll have my colleagues call
10 our first witness and we'll go from there.

11 THE COURT: That's fine. And I've read those
12 parts of the brief as I mentioned earlier, so it's not
13 like we won't consider what you've already put forth on
14 that.

15 MR. COLFAX: Thank you.

16 THE COURT: So the plaintiff is going to call a
17 witness?

18 MS. RAMCHANDANI: Yeah, good afternoon. We're
19 going to have Chief Williams to the stand.

20 THE CLERK: Chief Williams, please step forward
21 and be sworn, sir. Raise your right hand to be sworn.

22 WILLIE WILLIAMS, after being duly sworn,
23 testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Thank you, sir. And I forgot to ask

1 you to state your name for the record.

2 THE WITNESS: Willie Williams.

3 THE CLERK: Thank you, sir.

4 DIRECT EXAMINATION

5 BY MS. RAMCHANDANI

6 Q Good afternoon, Chief Williams.

7 A Good afternoon. How are you?

8 Q Could you tell us what your current occupation is?

9 A Repeat.

10 Q Your current occupation?

11 A Okay. Thank you. I currently serve as the interim
12 police chief of the City of Rocky Mount.

13 Q And how long have you been doing that for?

14 A I was hired and began my career there a second time
15 on December 12th, 2017.

16 Q Okay. Have you ever served as a chief of police in
17 any other jurisdiction?

18 A I have.

19 Q Where was that?

20 A I served three and a half years with the Petersburg
21 Police Department as chief of police. I got recruited to
22 my home town in Wilson, North Carolina, and I served there
23 three -- six and a half years. And then I later got
24 recruited to North Carolina Central University for six
25 years.

1 Q So about how many total years of police chief
2 experience?

3 A About 15 total as police chief.

4 Q And how many total years do you have as -- in law
5 enforcement?

6 A I have about 40 years in law enforcement totally.

7 Q Okay. And are you familiar with the two motorcycle
8 rallies that occur in Myrtle Beach every year, Harley Week
9 and Black Bike Week?

10 A I am.

11 Q And how many times have you attended each event?

12 A I attended the first two rallies in 1999. And I
13 think I have missed two times that I was unable to attend,
14 with 2014 being the year that I was unable to attend the
15 rally. And then in 2017, I was unable to attend the Black
16 Bikers Rally.

17 Q So in 2017, you attended Harley Week; is that
18 correct?

19 A That's correct.

20 Q And 2015 and 2016, you were at both events?

21 A Yes.

22 Q Chief Williams, in your opinion, is there any
23 difference between the groups attending Harley Week and
24 Black Bike Week that would justify the difference in
25 treatment in terms of the traffic management plan?

1 **A** Certainly, you have different behaviors. You have
2 two different groups, two cultures and others. But we
3 have not seen anything that will necessitate or warrant a
4 different pattern or, in some cases, even a pattern,
5 traffic pattern.

6 **Q** And have you observed any differences in the crowds
7 between Harley Week and Black Bike Week in terms of the
8 aggressiveness of the crowd?

9 **A** It's different, but it's very, very similar in that
10 they're all doing pretty much the same thing, here for a
11 good time. And they all do basically the same thing.

12 **Q** And what about any differences in terms of tendencies
13 towards violent behavior between the two crowds?

14 **A** You said --

15 **Q** Have you noticed any difference in terms of a
16 tendency towards violent behavior between the two crowds,
17 between Harley Week and Black Bike Week?

18 **A** Nothing that would warrant any difference in pattern.

19 **Q** And have you observed any differences in the behavior
20 of the crowds attending Harley Week versus Black Bike Week
21 that would explain why the Black Bike Week traffic pattern
22 that's currently in place is necessary?

23 **A** I have not seen one -- I have not seen anything
24 that's so criminal in nature that would warrant this kind
25 of pattern that we see here today. And in some instances,

1 I have not seen a need for a pattern.

2 Q And in your opinion, in your experience in law
3 enforcement, is the traffic plan that's used during Black
4 Bike Week right now from 2015 onwards an effective way to
5 respond to violence?

6 A Well, I certainly cannot see any correlation between
7 the violent two murders that they -- that we talked about
8 earlier being related to a traffic pattern. As we all
9 know that murders can take place any place because usually
10 murders are done by heat of passion, hit job, or domestic.
11 So it can be any place. So I have not seen any
12 correlation between the murders and a traffic pattern.

13 Q And is the traffic pattern in your opinion an
14 effective way to respond to an incident of violence?

15 A Not in my opinion.

16 Q Does the traffic plan that's in place right now help
17 to keep traffic moving efficiently through the city?

18 A Well, that is -- the purpose of a traffic pattern is
19 to keep the traffic moving. But the traffic pattern that
20 we have here is so widespread, it does very little to keep
21 the traffic moving. As a matter of fact, in 2016, my
22 partner and myself got on the pattern and we were there a
23 little better than two hours and we only went about two
24 miles. And a reporter also reported similar figures. So
25 you can sort of calculate that and show that if you're

1 going that distance in such a long time that you're not
2 moving very quickly.

3 Q Okay. So as I understand, the traffic pattern is not
4 helping to keep traffic moving efficiently?

5 A It does not.

6 Q And if you were responsible for traffic management
7 and law enforcement for Black Bike Week, how would you
8 approach some traffic control for that weekend in Myrtle
9 Beach?

10 A Well, you have to look at each situation differently.
11 But if I were to prepare a plan for Myrtle Beach, I
12 certainly would use a flush-out-type plan where you
13 control your flow of traffic with law enforcement,
14 signaling, and those kind of things. It is a plan that
15 you sort of put in place before, the day or two before
16 your event, and you assign personnel to a designated
17 place. And that person -- whenever your traffic builds up
18 where you want to move it out, you ask the officers to go
19 to their designated place and pull the traffic out. And
20 you move the traffic as quickly as you want to or as slow
21 as you want to. And then you move it out as long as you
22 need to.

23 So something like that would work. It would keep the
24 traffic flushed out and you control it based on your
25 personnel or how often you want to pull it out. It's

1 controlled by a commander of that agency.

2 Q And is that a strategy that you would suggest also
3 employing for Harley Week?

4 A For?

5 Q For Harley Week?

6 A Well, I don't know if I'm convinced -- well, I know
7 I'm not convinced that we need any kind of plan. But
8 certainly, if I use one plan, based on the two parties,
9 the two groups coming, I would use similar plans.

10 Q And just so I understand the flush-out plan, the
11 flush-out methods of traffic control that your suggesting,
12 do they allow for flexibility in terms of how you employ
13 them in real time for traffic conditions?

14 A Absolutely. Absolutely.

15 Q So there's no predetermined sort of requirement of
16 what -- having to use it, you know, in any given time.
17 You can decide what traffic conditions are like; is that
18 right?

19 A Only predetermined thing that you would have to have
20 is a commander and some type of plan before you get
21 started. But a commander out there making the decision as
22 to when it's time to pull the traffic out. And everybody
23 would know when he makes that call to go to a designated
24 place and pull the traffic through.

25 Q And you would not put a loop in for either weekend if

1 you were making the decision?

2 A If I'm making this decision alone, I would not use a
3 designated traffic plan. I would use the flush out, which
4 is a form of a plan, but certainly not a designated plan.

5 Q If you would compare having the flush out as an
6 option versus the traffic plan that's currently in place,
7 which plan do you think gives you more flexibility?

8 A The flush-out plan. It's very flexible, plus
9 effective.

10 Q Have you ever attended any other bike festivals that
11 are similar to Black Bike Week?

12 A I did. I think in maybe 2003, '4, somewhere there, I
13 attended the festival down in Galveston, Texas. And I had
14 a chance while I was there to look at this plan. And this
15 is what sold me on the plan when I saw how it was used
16 there.

17 Q When you say this plan, are you referring to the
18 flush out?

19 A Yes, the flush-out plan.

20 Q So when you were observing in Galveston, did you see
21 anything that was similar to the loop that gets put in
22 place or the traffic plan that gets put in during Black
23 Bike Week?

24 A Well, when I went in 2002 or '3, I can't remember,
25 but when I went, they used a traffic flush out as the only

1 type of plan they used. It was similar in nature with a
2 number of people attending, but they used the flush out
3 when the traffic built up. And that was the only plan
4 that they used at that time.

5 Q And the event that you observed in Galveston in 2003
6 or 2004, is it similar in nature to what you now see
7 during Black Bike Week in 2015, 2016?

8 A It is, a lot of traffic.

9 Q And in your experience, have you ever seen a traffic
10 plan or loop like the one that's used over Black Bike Week
11 in Myrtle Beach?

12 A Well, we have pretty much had a traffic plan for
13 Black Bike Week since I began my career down here, for my
14 time, it seemed like a career. But we have had a pattern
15 each year since I've been coming.

16 Q And have you ever -- the one that's now been used
17 since 2015, have you ever seen anything similar to that in
18 any other jurisdiction?

19 A Have not.

20 Q Okay. Have you attended any other weekends or
21 festivals in Myrtle Beach that attract a large crowd?

22 A I have. I used to attend the Sun Fun Festival. I
23 attended the July 4th week celebration. And then years
24 ago, Myrtle Beach used to have a fall Harley Davidson
25 rally. I used to attend that rally as well.

1 Q And do any of those events result in a similar
2 atmosphere to Black Bike Week?

3 A Similar atmosphere with a lot of people, but no
4 traffic pattern.

5 Q And so the city does not put a traffic pattern in
6 place for those weekends similar to the ones they use in
7 Black Bike Week; is that correct?

8 A Yes.

9 Q Okay.

10 MS. RAMCHANDANI: Thank you very much, Chief
11 Williams.

12 MR. MICHAEL BATTLE: Just briefly.

13 THE COURT: Let me just kind of get my bearings
14 straight on the times.

15 You can proceed. Thank you.

16 CROSS-EXAMINATION

17 BY MR. MICHAEL BATTLE

18 Q Chief Williams --

19 A Yes.

20 Q -- I've heard you talk about plans in what you would
21 do, but I haven't heard you mention anything about the
22 plan you actually prepared and submitted to the Bikefest
23 Task Force. Could you tell us a little bit about that?

24 A That is the flush-out plan that I alluded to.

25 Q That plan also had a loop in it, too, didn't it?

1 A It had a -- not a loop, but it had a small pattern in
2 it as well.

3 Q It had a one-way loop you just used --

4 A It did. It did.

5 Q So you had a loop and one-way traffic on Ocean
6 Boulevard in the plan that they have not presented that
7 you actually prepared; is that correct?

8 A Absolutely, I did. Let me share with you about that.
9 It was done by design. I'd rather not have a traffic
10 pattern at all. But I knew going into that committee,
11 going before that committee that I could not write a plan
12 that would eliminate a pattern in there at all. So I was
13 hoping that we would -- could compromise and I could come
14 out with some type of difference in the plan. It was not
15 that I preferred a plan, because I don't. But it was my
16 thinking that maybe we can get that part implemented
17 rather than to cut all patterns out.

18 Q So you're saying that something is needed, but you
19 would prefer nothing be done?

20 A No. I prefer, at least, a compromise and that's my
21 compromise.

22 Q I understand. Now, with regard to your plan, it was
23 submitted to the Bikefest Task Force, was it not?

24 A It was.

25 Q Haven't heard that mentioned by your side yet. Who

1 are they?

2 A What do you mean they?

3 Q What organization is the Bikefest Task Force?

4 A It is the task force that coordinates the festival.

5 Q And it was the Bikefest Task Force that rejected your
6 plan; is that not correct?

7 A Some of them rejected it.

8 Q Well, weren't you told by the Bikefest Task Force
9 that this plan is not acceptable?

10 A I got no results from the -- from that committee. I
11 have not heard anything about it from the committee.

12 Q Did you ask?

13 A I did not ask them.

14 MR. MICHAEL BATTLE: Thank you. No further
15 questions.

16 MS. RAMCHANDANI: Nothing further from the
17 plaintiff.

18 Chief Williams, step down.

19 THE COURT: Thank you, Chief Williams.

20 MS. ARANDES: Plaintiffs call their next
21 witness, Dr. David Clarke.

22 THE CLERK: Please step forward to be sworn in,
23 sir. Would you state your name for the record, sir?

24 THE WITNESS: David Bruce Clarke.

25 THE CLERK: Thank you. Please raise your right

1 hand to be sworn.

2 DAVID CLARKE, after being duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 THE CLERK: Thank you, please take a seat.

6 THE WITNESS: You want me to test this and make
7 sure it's not too loud?

8 THE CLERK: Sir, you can adjust that. Yes, sir.

9 DIRECT EXAMINATION

10 BY MS. ARANDES

11 Q Good afternoon.

12 A Good afternoon.

13 Q What is your area of study?

14 A I'm a civil engineer by training and my specialty
15 area is in transportation engineering.

16 Q And how long have you been working in transportation
17 engineering?

18 A Well, I'm going on to probably between 36 and 37
19 years at this point.

20 Q What degrees do you hold?

21 A I have a Bachelor's Degree in Civil Engineering,
22 Master's Degree in Civil Engineering, and a Ph.D. in Civil
23 Engineering. And all those focused on transportation.

24 Q And where are you currently employed?

25 A I work at the University of Tennessee in Knoxville.

1 And it's just a different kind of orange from what we have
2 here. And I direct the Center for Transportation Research
3 and also have an appointment in the Civil Environmental
4 Engineering Department as a Research Faculty Member.

5 Q Approximately how many times have you testified at a
6 trial as an expert in transportation engineering?

7 A At least six, probably seven times in court.

8 Q Did you submit an expert report related to traffic
9 engineering in an earlier litigation regarding the
10 motorcycle rallies in Myrtle Beach referred to as Harley
11 Week and Black Bike Week?

12 A Yes, I did.

13 Q Generally, what was the scope of your expert work in
14 that case?

15 A It was to look at the Harley event and the Black Bike
16 Week event for a particular year and observe how the
17 traffic flowed during those events, evaluate by collecting
18 data and other evidence to document differences in the
19 traffic flow from one week to the next.

20 Q And generally, what were your conclusions?

21 A Generally, my conclusions were that the two events
22 appeared to be similar in size and nature. But that the
23 traffic arrangements during Black Bike Week, which were
24 different at that time from Harley Week, although, again,
25 different now than they were then, resulted in a poorer

1 level of performance, at least along Ocean Boulevard and
2 the immediate streets in the area of Ocean Boulevard,
3 during Black Bike Week.

4 **Q** And did you have an opinion about the results of the
5 plan implemented in Black Bike Week at that time?

6 **A** I'm sure I did have opinions. It seemed to me, if I
7 recall, and it's been a good many years ago, that the
8 traffic pattern for Black Bike Week generally resulted in
9 a lower level of service along Ocean Boulevard than the
10 plan or the traffic arrangements that were in effect for
11 Harley Week.

12 **Q** So what was the scope of your work with respect to
13 Black Bike Week and Harley Week in 2017?

14 **A** It was similar to, again, come and observe. Although
15 I was not able to make the Harley Week last year, I sent a
16 team down that carried out at my direction certain
17 measurements and observations. And we evaluated, again,
18 the traffic flows for those two events with Harley Week
19 actually not having much different traffic pattern than is
20 the norm. But as we discussed, Black Bike Week having the
21 one-way traffic limitation and the loop at nighttime
22 hours.

23 **Q** Other than going down to Myrtle Beach and sending
24 your team down to Myrtle Beach and reviewing traffic
25 patterns during those weekends, did you review anything

1 else as part of your work evaluating the plans?

2 **A** Yes, I did. I reviewed the plan that Myrtle Beach
3 had put into place for Black Bike Week and also looked at
4 various documents that they produced, an after-action
5 report, for example, for last year's event. And I believe
6 the preceding years as well.

7 **Q** Generally, do you think that the City of Myrtle Beach
8 has complied with national norms for traffic management in
9 creating and implementing a traffic plan during Black Bike
10 Week?

11 **A** No. Actually, I don't see much evidence that there's
12 a real formal traffic planning process that has gone into
13 place, at least as far as what we classically would do.
14 For example, there's no real evidence of any data being
15 collected on either event regarding the patterns of
16 demand, the patterns of travel within the area, the times
17 on which a plan would have to be based. And no evidence
18 that there were any alternatives examined to look at
19 optimizing the flow of traffic during either event, to be
20 frank. And certainly, there's not been any evidence there
21 was any followup to determine whether the plans actually
22 did help traffic to move.

23 **Q** And just to be clear, is it standard practice to --
24 as part of planning a traffic plan for a planned special
25 event to collect data beforehand, analyze it, collect data

1 during the event, and then analyze that data afterwards?

2 Is that all part of the standard practices?

3 **A** Yes, it is, those are all normal planning
4 methodologies. They're documented in various manuals that
5 have been produced by different agencies about how to deal
6 with special events. And, you know, you have to have a
7 basis upon which to develop a plan, to identify where the
8 traffic problems are likely to be. Then you have to
9 develop various alternative methodologies to address those
10 issues, determine which ones appear to work the best.
11 During the event as it unfolds, collect data to determine
12 whether or not the plan actually is doing what it's
13 supposed to be doing, and how to followup after the event
14 to look at fine tuning the plan, scrapping it, revising
15 it, or whatever. This feedback does not appear to be
16 present in what's going on over the past few years.

17 **Q** To the extent the city has a goal of facilitating
18 traffic flow during Black Bike Week, do you have an
19 opinion about whether the traffic plan that they're using
20 is meeting that goal?

21 **A** My observations were that during Black Bike Week, the
22 traffic patterns, at least regarding Ocean Boulevard, the
23 traffic flow was terrible. I mean, level service F is
24 what we generally have as our lowest grade for traffic and
25 this would probably be an F minus minus.

1 Q To the extent that the city has a goal of decreasing
2 violence during Black Bike Week, are you aware of any data
3 or reason to think that a traffic plan would be effective
4 in preventing incidents of violence?

5 A That's a really interesting research area. I don't
6 see anything in the practitioner's literature that
7 correlates random violence with traffic patterns. Not to
8 say that, perhaps, if we funded a national study, we might
9 uncover something, but we certainly have no guidance right
10 now how the two are interrelated.

11 Q Did you review the after-action reports prepared by
12 the City of Myrtle Beach after Black Bike Week in recent
13 years?

14 A I did.

15 Q Do any of those after-action reports discuss or
16 analyze any traffic-related issues?

17 A They appeared to focus almost exclusively on the
18 deployment aspects and the law enforcement aspects of what
19 went on down there. There was scarcely any mention of
20 traffic behavior at all.

21 Q Did you review data produced by the city regarding
22 police and fire department response times, motor vehicle
23 accidents, and crimes reported during Memorial Day Weekend
24 during the last several years?

25 A I did.

1 Q Do you have any opinions about that data?

2 A I believe Mr. Colfax's opinions were very well put.
3 I could not discern any cause and effect relationship in
4 the data that were presented. There were ups and downs.
5 They did not necessarily correlate with the traffic plans
6 that were in effect in a way that you would expect them
7 to. And so to my way of examining those, it did not show
8 any true trend that would be defensible.

9 Q What was your overall impression of the traffic plan
10 put in place for Black Bike Week?

11 A That the plan aggravated the traffic flow. It
12 degraded it. It did not help it in any way that I could
13 discern. And in effect, it almost discouraged you from
14 traveling rather than assisting you in moving more
15 expeditiously along Ocean Boulevard.

16 Q What were the traffic conditions along Ocean
17 Boulevard when it was narrowed to a single lane during
18 Black Bike Week?

19 A The traffic speed overall was very low. In fact,
20 walking, you could generally make better time than in a
21 vehicle. It was extremely -- in traffic terms, we say
22 it's unstable traffic flow, stop and start. If anybody
23 paused, then traffic behind them would rapidly bunch up.
24 And it just generally was a very poor flow.

25 Q And what about the traffic conditions along Ocean

1 Boulevard during the hours when the loop was in place
2 during Black Bike Week?

3 A The same at best, much worse in general.

4 Q In a situation where traffic has been forced to move
5 in a single direction and the majority of the
6 cross-streets are closed, do you have an opinion on best
7 practices with respect to traffic signals along that road?

8 A In any situation like this where we have extremely
9 heavy traffic demand, the traffic signals are generally
10 not well able to deal with the traffic. And our normal
11 recommendation is to put the traffic signals on flashing
12 and have the police officers direct traffic.

13 Q Based on your observations and the observations of
14 your team, do you believe that was done during Black Bike
15 Week?

16 A Not that I could tell.

17 Q Do you believe that the traffic plan used during
18 Black Bike Week facilitates the flow of traffic?

19 A No.

20 Q What can you conclude about the traffic restrictions
21 put in place during Black Bike Week?

22 A They did not materially help traffic move along Ocean
23 Boulevard in the best possible fashion, which is generally
24 what you try to do with a plan, is make things as good as
25 they can be.

1 Q What traffic restrictions did your team observe on
2 Ocean Boulevard during Harley Week in 2017?

3 A I don't recall anybody indicating they saw any
4 restrictions on traffic.

5 THE COURT: Let me -- counselor, just let me
6 stop you, not anything related to testimony.

7 MS. ARANDES: Did I run out?

8 THE COURT: You're okay. You've got a little
9 more time, but I'm thinking about Ms. Martin who has been
10 going a while. Are you near the end? Are you -- on the
11 clock, you've got, you know, less than ten minutes. But
12 I'm not going to, you know, stop immediately. But if
13 you're going to be -- I'm trying to decide whether we need
14 to take a break.

15 MS. ARANDES: I've got about a minute and a
16 half.

17 THE COURT: Keep going. Thank you very much.

18 MS. ARANDES: Okay.

19 Q Was there a dedicated emergency lane on Ocean
20 Boulevard during Harley Week?

21 A No, there was not.

22 Q Was there a traffic loop imposed during Harley Week?

23 A No.

24 Q How did traffic perform during Harley Week as
25 compared to Black Bike Week?

1 **A** Our measurements indicated the traffic flow was
2 generally better both in terms of speed and in the number
3 of vehicles. Incidentally, we also saw more motorcycles
4 on Ocean Boulevard during Harley Week.

5 **Q** Based on the observations and data gathered by you
6 and your team, did you see any evidence that there were
7 significantly different traffic demands on Ocean Boulevard
8 during Black Bike Week and Harley Week?

9 **A** No, we've not been able to identify any differences
10 in the traffic demand.

11 **Q** Did you see anything that would justify the
12 difference in magnitude between the plan used during
13 Harley Week and the plan used during Black Bike Week?

14 **A** Again, no.

15 **Q** Did you review any publicly available transportation
16 data that supports the conclusion that the demands between
17 the two weeks are similar?

18 **A** We've started looking at the continuous count data
19 that SCDOT collects in and around Myrtle Beach area on
20 various major roads. And thus far, from 2010 to date, the
21 traffic volumes are almost identical on both Harley Week
22 and Black Bike Week for the same days.

23 **MS. ARANDES:** All done.

24 **THE COURT:** Thank you very much.

25 Mr. Battle?

1 **MR. MICHAEL BATTLE:** You want me to do my cross?
2 I won't be long.

3 **THE COURT:** Let's go ahead and deal with this,
4 then we'll take a little break.

5 **CROSS-EXAMINATION**

6 **BY MR. MICHAEL BATTLE**

7 **Q** Dr. Clarke, my name is Mike Battle. And if I seem a
8 little bit tense that's because that's my nature, not
9 anything directed at anybody here. Speaking of intent,
10 what is the intent of the Harley riders when they come to
11 Myrtle Beach?

12 **A** Um, I'm not a Harley rider, so I can't put myself in
13 their shoes. My understanding is they come to enjoy being
14 with their fellow Harley riders at Myrtle Beach and
15 attending various events and enjoying the amenities of the
16 beach.

17 **Q** Would you be surprised to learn that the intent of
18 Harley riders is to get in and out of the city as quickly
19 as possible to go to the events that take place outside of
20 the city?

21 **A** I've never done a study of that, so I'd have to take
22 your word for it.

23 **Q** Have you ever heard of the boycott that the Harley
24 riders have done with the City of Myrtle Beach?

25 **A** Was that over the helmet law?

1 Q Not a dime in '09.

2 A I've heard about the helmet incident, but that came
3 between my involvements with the rallies.

4 Q What is the intent and purpose of the riders on
5 Memorial Day Weekend?

6 A I've not conducted a poll of the riders, so my
7 impression is that they come also to enjoy the things that
8 Myrtle Beach has to offer and the surrounding area of the
9 strand.

10 Q Now, you've heard your attorneys say that they come
11 for a social gathering. That all they want is to open up
12 Ocean Boulevard and to do away with the loop so that they
13 can freely travel up and down Ocean Boulevard. Would you
14 be surprised to learn that the intent of the riders for
15 Memorial Day Weekend are to congregate and, more or less,
16 cruise up and down Ocean Boulevard?

17 A Could be. I saw plenty of motorcyclists both
18 weekends on Ocean Boulevard. So I'm interested in hearing
19 what you have to say, but I've not --

20 Q I think you'll get to hear a lot of what I have to
21 say at some point in time because I've never taken your
22 deposition, have I? I wasn't part of the original team
23 back --

24 A I don't recall our ever meeting.

25 Q I haven't had an opportunity, nor has my son had an

1 opportunity to explore the basis for your opinions or even
2 cross-examine you except for this brief moment here?

3 A That would be my recollection, that we have not met
4 before.

5 Q All right, sir. And do you have a plan for Memorial
6 Day Weekend? Have you prepared a plan?

7 A Have I prepared a plan?

8 Q Yes, sir.

9 A A traffic plan?

10 Q Yes.

11 A Or a plan to come to Myrtle Beach?

12 Q A plan, a traffic plan that you think would work for
13 Memorial Day Weekend?

14 A Um, it would be interesting to have that opportunity
15 and I have some ideas I would like to try out, but I've
16 not been asked to prepare a plan for Myrtle Beach.

17 Q And one of the reasons is you don't have enough data
18 and the statistics and all that sort of stuff that would
19 suit you to make a proper plan to make that event a
20 publically safe or public safety event?

21 A Well, I'm not aware that any planner would differ
22 with my opinion on that.

23 Q Agree. You wouldn't -- wouldn't differ that there's
24 not enough evidence out there, not enough work being done
25 to determine whether or not the plan is proper?

1 A Well, I'm not saying that work couldn't be done.

2 Q I know you're not saying, but what we're saying at
3 this point, at this preliminary injunction stage where
4 we're asking the judge to come in and take over a plan,
5 there's not enough evidence for us to determine what plan
6 should be in place?

7 A The best evidence we have is --

8 Q Would you agree with that?

9 A -- that the plan for Harley Week would work just as
10 well as the plan for Black Bike Week since the two events
11 are proportionally the same size. And traffic demand is
12 largely based on the number of attendees, recognizing that
13 locations of certain events around the area can influence
14 that. But Ocean Boulevard is a popular location for
15 people who come to Myrtle Beach. So two events of similar
16 size, we should see a similar amount of traffic on Ocean
17 Boulevard.

18 Q But you agree with me, do you not -- didn't you just
19 agree with me that you don't have enough data to make a
20 plan at this time that you would feel comfortable putting
21 in writing and signing your name to, putting your seal on?

22 A I would feel very comfortable going with the Harley
23 plan for Black Bike Week based on what I know at this
24 time.

25 Q You would?

1 **A** I would.

2 **Q** And you don't need to know what the intent of the
3 Harley bikers are and you don't know what the intent of
4 the Memorial Day Weekend bikers are, where they want to
5 go, how they want to travel from one point to another,
6 what they want to do when they reach that point? If you
7 don't know their destinations and their intent, how can
8 you make a traffic plan?

9 **A** Well, it's a lot easier when we're just looking at
10 Ocean Boulevard, which is the main focus of the Black Bike
11 Week plan. And a good many people go to and from
12 designations along Ocean Boulevard. We know that. A good
13 many of them like to ride the length of Ocean Boulevard
14 and then, perhaps, come back and ride it again. And we
15 can calculate with a fair degree of reasonableness that
16 about the same number of people are going to do that
17 during Harley Week as they do during Black Bike Week.

18 **Q** So your testimony today is that the no traffic
19 restrictions is the best way to deal with Memorial Day
20 Weekend?

21 **A** Based on what I know right now, I see no reason to
22 have a separate plan during Black Bike Week.

23 **MR. MICHAEL BATTLE:** No further questions.
24 Thank you.

25 **MS. ARANDES:** Your Honor, we have no more

1 witnesses.

2 THE COURT: Okay. Thank you.

3 You may step down, Dr. Clarke.

4 We're going to take a five-minute break. So if
5 y'all could -- we'll be at ease for five minutes, come
6 back, let's say, at 3:20 and we'll start then.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Be seated, please.

9 Mr. Battle?

10 MR. MICHAEL BATTLE: Thank you, Judge.

11 THE COURT: Yes, sir.

12 MR. MICHAEL BATTLE: And for the record, again,
13 my name is Mike Battle and I am the attorney for the City
14 of Myrtle Beach. And we're here on the NAACP vs. The City
15 of Myrtle Beach.

16 What I want to do is give you an introduction of
17 what I'm going to tell you. And I'll just proceed in how
18 this talk is going to go. And then at the end, we'll call
19 two witnesses.

20 I'll give you a summary of the case. I'm going
21 to tell you what I view the purpose of preliminary
22 injunction is as a remedy. I'm going to give you an
23 argument as to why I do not think a preliminary injunction
24 is appropriate at this point. And I'm going to talk about
25 what the status quo really is at this time.

1 Of course, we'll have witnesses who will -- and
2 I want to call witnesses to demonstrate the amount of
3 preparation, planning, and work that we have already put
4 into the 2018 Memorial Day Weekend. And we want to show
5 that it is a major public safety event that is complex,
6 and the comprehensive knowledge that has been accumulated
7 over 20 years of working with this particular event, and
8 the reasons why the traffic plan and the loop are
9 necessary. I want to cover all those topics.

10 First thing I want to talk about, what is the
11 event we're talking about? We have two very different
12 opinions and views of what this event is.

13 You have the plaintiff's view, which is this is
14 a social gathering for unity and meeting with friends and
15 catching up with one another. They say it is an event
16 that is sponsored by Atlantic Beach. It's not sponsored
17 by the City of Myrtle Beach. And it's not supposed take
18 place in the City of Myrtle Beach. But for them, it's a
19 place for them to come and cruise up and down Ocean
20 Boulevard.

21 For the city, we have an entirely different view
22 of the event. For us, it is a major public safety event.
23 And that is how we have to look at it. How do we police a
24 major public safety event? Because as they say, we have
25 350,000 people come in for this event. 350 are not spread

1 out all over Myrtle Beach or Horry County the way they are
2 in other special events or other events. This would be an
3 extraordinary event because there's no sponsor in Myrtle
4 Beach. There are no events in Myrtle Beach. Here, we're
5 having to deal with a major public safety event that we
6 are left to make as safe as we possibly can. That is our
7 purpose and policing that event is our goal.

8 If you look at the plaintiff's experiences over
9 the last 20 years, they are somewhat limited. They are
10 not policing day-to-day in the City of Myrtle Beach.
11 They're not policing all aspects of the event. They're
12 only policing some small part of what they witness as one
13 person in the middle of a crowd. You'll hear from the
14 city police chief who's been working with and planning for
15 Memorial Day Weekend for 20 years.

16 And I want to say right now that the comparison
17 between Myrtle Beach -- or Memorial Day Harley Week and
18 Harley Week comparison is sharply disputed {verbatim}.
19 The facts are very much disputed. You've got affidavits
20 that you've already alluded to that you've read on both
21 sides. We've put in films showing events that are -- or
22 happenings that are occurring during Memorial Day Weekend
23 and we're showing statistics and graphs.

24 They may downplay them. We think they're
25 significant, particularly when it comes to response and

1 getting able to get through the traffic to an emergency
2 with emergency vehicles getting to the hospital or getting
3 to the airport or wherever a person needs to get to.

4 Because you'll see that this plan is designed to be able
5 to allow any person to get anywhere in the City of Myrtle
6 Beach if they just know how to navigate and they don't
7 have to get into the loop.

8 I've already talked and established with
9 Dr. Clarke that the purpose of the Harley riders is to get
10 in and out of Myrtle Beach. They like to go to the south
11 end. You can see that in some of the affidavits. They
12 talk about the Suck Bang and Blow. They talk about the
13 Rat, the Beaver Bar. Those are the places they like to go
14 and where they like to hang out. And those are, more or
15 less, special events with parking lots and people coming
16 there.

17 Violet Lucas provided a similar type of
18 affidavit where she said, well, we've gotten to the point
19 now where there's so many cars and there's so much traffic
20 in Ocean Boulevard, we like to do our stuff up at North
21 Myrtle Beach. And they do things like rent the House of
22 Blues and have parking lots and have their own special
23 events there.

24 What the plaintiff is asking you to do -- and
25 they were very clear, even Dr. Clarke was very clear, what

1 they want you to do is if the city is enjoined from
2 implementing a one-way traffic plan and from maintaining a
3 traffic loop within its jurisdiction, plaintiffs will
4 receive all the relief they seek in this motion.

5 What they want to do is return to 2014. And
6 2014, that plan was a plan that was considered a failure
7 by all government law enforcement agencies involved all
8 over the state. And that was the reason we had a summit
9 and got everybody together and said, okay, 2-14, and
10 actually as far back as 2007, they say your plan is
11 failing. We're not achieving good government and we're
12 not having public safety as a primary event.

13 And one thing I want to talk about when we talk
14 about success on the merits is the Court does not have
15 jurisdiction to give the plaintiffs the relief they seek.
16 And that's very important.

17 There are certainly 23 miles of the traffic
18 loop. Six miles of it down here is on roads that are
19 controlled by City of Myrtle Beach, owned by City of
20 Myrtle Beach. The rest of it is the South Carolina
21 Department of Transportation. They are not parties here.
22 If you enjoin and issue a preliminary injunction at this
23 stage, how are these people going to get to and what makes
24 them think the rest of this loop will not still be in
25 effect?

1 There's no way that this Court can influence
2 what takes place from here all the way over to here where
3 the South Carolina Department of Transportation -- and we
4 have put in the record letters where they have given
5 approval for us to do whatever we have to do or want to do
6 in that part of the loop that is in our jurisdiction. But
7 they still are, ultimately, in control and they are not
8 parties. And that's very important. Because you were
9 trying to -- they're asking you to give them relief that
10 you just cannot do based on the jurisdiction that you have
11 at this point in time.

12 Certainly, you have jurisdiction over the city
13 and the Myrtle Beach Police Department. But as far as the
14 loop, that is a creature of the task force, the Bikefest
15 Task Force. You didn't hear Mr. Colfax mention that one
16 time during his argument.

17 But you have seen -- they talked about
18 after-action reports. Those after-action reports were
19 made to the Bikefest Task Force. The chairman of the
20 Bikefest Task Force is Randy Weaver. You've got an
21 affidavit from him. He is the person who is responsible
22 for emergency response for Horry County. Does not work
23 for the city and we have no control over him.

24 So for that reason, what we're saying here is
25 that if you go into the Arlington Heights analysis, one of

1 the first things that the Arlington Heights analysis, what
2 was the intent of the decision maker? You know who the
3 decision maker was in this case? The decision maker was
4 the Bikefest Task Force plan. You will see -- or as the
5 case develops, they will find that the City of Myrtle
6 Beach submitted a different traffic loop that was rejected
7 by the Bikefest Task Force. So they're the ones that
8 you're going to have to get the intent under the Arlington
9 Heights.

10 They say we don't have an articulable rational
11 basis for policing the event. Our basis is very
12 articulated not just by the city, but all the members of
13 the Bikefest Task Force. And I could read out -- you've
14 got all the members, it's all the cities, SCDOT, SLED,
15 South Carolina Departments of Commerce, the Highway
16 Patrol, all the cities, and all of Horry County are the
17 ones that say this is the basis and this is the reason for
18 this plan.

19 **THE COURT:** I recall there being maybe a dozen
20 municipalities.

21 **MR. MICHAEL BATTLE:** Everyone in the county.

22 **THE COURT:** They're all cities, they're Horry
23 County, the municipalities within the county as well as
24 the Department of Transportation; is that correct?

25 **MR. MICHAEL BATTLE:** Well, I can give them to

1 you.

2 THE COURT: No, don't do that. I've got that
3 there. I know where to look.

4 MR. MICHAEL BATTLE: It's every -- even Loris,
5 which is not affected by it, it's Conway, which has people
6 come through it, but it doesn't get affected by it.

7 THE COURT: So they're outside of Horry County?

8 MR. MICHAEL BATTLE: No, sir, they're in Horry
9 County, but they're -- Horry County is the largest land
10 mass east of the Mississippi which is a single county.
11 It's bigger than the State of Rhode Island, as a matter of
12 fact.

13 So what we're talking about here is a large area
14 and we're having a large cross-section of people. There
15 are 370,000 people in Horry County now. A large
16 cross-section of people looking at this plan. And the
17 generally accepted basis for the reason why we have a
18 traffic plan is it promotes public safety. We've got two
19 people here who I hate to disagree with, but I would say
20 one thing is their opinions are sharply contested.

21 Now, the question that we get to as we go
22 through the test, and I haven't touched on it much, what
23 is the purpose of a preliminary injunction? We're here
24 and you're being asked to base on this suit that's been
25 here for two and a half months, we have not been allowed

1 to do any discovery or not been able to do any discovery
2 written or otherwise.

3 **THE COURT:** Have y'all sought to do discovery?

4 **MR. MICHAEL BATTLE:** Nobody's sought to do
5 discovery because we've gone from judge to judge and
6 getting status conferences. And there hasn't been
7 anything scheduled at this point in time. There has
8 been -- Mr. Colfax's firm has done an extensive Freedom of
9 Information Act examination of documents. But the city
10 has not had an opportunity -- and we would -- first, we
11 learned of the suit -- actually, it was when they let us
12 know a few days before they filed it at the end of
13 February or March, which is about two and a half months
14 before the Memorial Day Weekend event takes place.

15 The courts will tell you that the purpose of the
16 preliminary injunction is to preserve the status quo. And
17 we're going to talk about why the status quo is what's
18 been in place for the last three years. It's not just
19 what's been in place for the last three years that --
20 because it's been in place, but this is how the public has
21 been educated.

22 We sent out notices. We have all these officers
23 trained. We have officers coming from all over the state
24 and from other states coming in to help police this event.
25 They have been given special training. They have been

1 given sensitivity training. And they're here with their
2 deployments. We've already made the deployments and we've
3 already spent close to \$305,000 getting ready to stage
4 this public safety event as best we can. That would all
5 be taken away in the stroke of a pen if that were to
6 occur.

7 Let me go to the irreparable harm because that
8 touches on that basis. You've got the First Amendment
9 test. You have to have an intent to communicate an
10 articulable message. Every time somebody rides a
11 motorcycle up and down the street is not an articulable
12 message. I'm sure Mr. Colfax is saying, well, that's what
13 we intend to do. It might be what Atlantic Beach intends
14 to do, but it's not what is intended to be done in Myrtle
15 Beach. But that's what we're talking about, what are they
16 going up and down the street, 6th Avenue, Ocean Boulevard?

17 Then the next part is the likelihood is great
18 that the message would be understood by the public. Well,
19 that's not the case. And I don't have any proof, I
20 haven't done any testing of it or one way or the other,
21 but I haven't seen in any of the affidavits where they
22 would -- anybody talked about, you know, this is a parade.
23 We had a permit or anything like you would do. They use
24 parade cases, where you might have the gay rights parade
25 and they say that certainly is intended to convey a

1 message and it's not a written articulable message. But
2 that is not a parade. This is a 24/7 up and down the
3 street congregation of people.

4 And then, of course, the case of Shanks vs.
5 Forsythe County --

6 **THE COURT:** Let me stop you on that, Mr. Battle.

7 **MR. MICHAEL BATTLE:** Sure.

8 **THE COURT:** I appreciate you saying, and it's
9 consistent with my memory, that you didn't have evidence
10 of the public's understanding or lack thereof. I don't
11 recall it really on either side. I'll give the plaintiff
12 a chance to address that later. But I don't recall that
13 either way being offered in the way of proof.

14 **MR. MICHAEL BATTLE:** It was not offered. They
15 were saying that's what they'd like to do and what they
16 perceive, but there was nothing in the affidavits
17 indicating I'm there to communicate.

18 **THE COURT:** Well, I'm really talking about not
19 what they're trying to communicate --

20 **MR. MICHAEL BATTLE:** Oh, well, that's what I
21 understood.

22 **THE COURT:** -- but as I understand the issue is
23 what the public articulates. And I saw no evidence really
24 from either side on what the public understands the event
25 to be.

1 **MR. MICHAEL BATTLE:** That would be correct.

2 **THE COURT:** And I'm not -- I know y'all will
3 have a chance to come back and address that if you'd like
4 to.

5 **MR. MICHAEL BATTLE:** That's what we're talking
6 about with the First Amendment and the -- what is the test
7 for finding it.

8 Then you look to the First Amendment -- and
9 then, of course, if there is a First Amendment violation,
10 so to speak, there's some question of irreparable harm or
11 something along those lines. I would refer you to the
12 Memphis vs. Green case where traffic was altered and they
13 said that's not the kind of harm we're looking for.

14 You do have the -- what the harm that would be
15 to the plaintiffs if you deny the preliminary injunction,
16 the loop would stay in place, but it would only be in
17 place from 10 to 2 each night. That's 12 hours out of a
18 weekend, from 10 to 2, during the critical times of mass
19 critical concentration of people as Mr. Colfax said.

20 And it would also be a time when we're
21 experiencing the most violent or criminal activities. And
22 we have to be able to respond and get to the scenes. And
23 when the traffic is congested and blocked, as it was
24 during 2014, we were unable to get there to adequately
25 perform our government services.

1 And if you take the concept of what cruising two
2 ways on Ocean Boulevard are, the best analogy I would say,
3 it would be like having a parade going in two directions.
4 You've got this parade going south and this parade going
5 north and they bump into each other. You would expect to
6 have congregation. You would expect to have congestion.
7 And you would expect to have confusion and frustration.

8 Talking about the status quo one more time,
9 since 1999 there has been one-way traffic on Ocean
10 Boulevard except for three years when the city exercised
11 its discretion to try to say, okay, let's see what happens
12 if it doesn't -- if we let two-way traffic come back and
13 forth. And they still had some traffic controls, but they
14 allowed it to come back. And each time, the law officers
15 would come in and they would approach the city manager and
16 say, look, how about we need to look at something else
17 because we've got to get these emergency lanes opened.

18 **THE COURT:** Is that '11, '12 and '13?

19 **MR. MICHAEL BATTLE:** No, sir, that would be '12,
20 '13, and '14. 2011 was not -- that was the year they made
21 the decision, and '12, '13, and '14 were the years that it
22 came into being.

23 **THE COURT:** Okay.

24 **MR. MICHAEL BATTLE:** And even the settlement
25 agreement approved by the NAACP and the plaintiffs allowed

1 that to occur. For them to say now that that's not the
2 status quo is nothing that they had any participation in.

3 Irreparable harm to the city and to the Bikefest
4 Task Force, we don't want to return to the government
5 failure that occurred during 2014 where you have someone
6 who is shot and bleeds out on the stairs because he cannot
7 get an ambulance to him, or people being shot in the
8 street because you cannot get a police officer presence.

9 There was a statewide response to that
10 government failure. You had the governor, Governor Haley
11 comes down and says this has got to stop. Even had
12 members of the NAACP, Mickey James standing up saying this
13 has got to stop. He's now a plaintiff in this suit and
14 saying he wants to return to that. But back in 2014, that
15 was not the case. And that's something we will explore
16 during the course of discovery.

17 The harm would be a mismanaged public safety
18 event, which would be a harm to the public. The harm
19 would be it would delegitimize the city's authority. It
20 would delegitimize the Bikefest Task authority. And it
21 would simply say what you're doing is illegal. Pay no
22 attention to the protectors up here, turn them into
23 guards, containment guards with a hands off.

24 They talk about the balance of the equities.
25 Balance of the equities, it was interesting to note they

1 said the City of Myrtle Beach is friendly and very cordial
2 to us African-Americans 362 days out of the year, but on
3 three days for some reason, they turn into racists. It
4 does not make sense to me. I do not understand that
5 logic. The point is that it is a public safety event.
6 They want to view it as a social gathering. But it's
7 still very much a public safety event and we have to take
8 it very, very seriously.

9 It is such that looking at the balance of the
10 equities, I've talked about the harm to the plaintiffs.
11 You look at the harm to the city, we will lose our
12 resources that we have invested since 2015. You'll hear
13 testimony of Joey Crosby, who will come up and testify
14 that he's been working on the 2018 plan since August of
15 2017.

16 As far as an equity -- or an equitable defense,
17 I think the plaintiffs are guilty of laches. They have
18 had a plan -- this plan has been in effect for three
19 years. They have participated in it and have tried to
20 influence it.

21 They have began planning the lawsuit itself
22 before the 2017 Memorial Day Weekend. You heard
23 Dr. Clarke talk about he came down and sent a team down to
24 do the measurements and everything. But they waited.
25 They waited approximately two and a half months before the

1 event began to file the suit.

2 And they've come up with all these statements
3 that we sharply contest about what the facts are. And
4 it's hard for me to sometimes not get overexcited about
5 the facts, how wrong they have the facts. I mean, they
6 don't even know who to sue. They don't even know who owns
7 the roads or who controls the roads. They say it's a
8 Myrtle Beach Bikefest, it's a Myrtle Beach event, when
9 there are no events -- as you pointed out, there are no
10 events that take place in Myrtle Beach, no scheduled
11 events.

12 **THE COURT:** Is that the case for both Harley
13 Week and Bikefest?

14 **MR. MICHAEL BATTLE:** Not for the Harley people.
15 They come -- Myrtle Beach, you have to understand, all the
16 hotels, all the high-rises are located right in here.

17 **THE COURT:** Yes, sir.

18 **MR. MICHAEL BATTLE:** And the only place if
19 you're going to stay, if you're coming from out of town,
20 you either rent a house up here, which some of the bikers
21 do, or you get a hotel room. So they have to come in --
22 they want to go down here to Murrells Inlet. It's not on
23 the map. But --

24 **THE COURT:** You're talking about Harley Week?

25 **MR. MICHAEL BATTLE:** Harley Week, down here.

1 And what Ms. Lucas was saying is that they like to go up
2 there to the northern end of the beach.

3 THE COURT: But my question was, and I want to
4 make sure it's clear for both Harley Week and Bikefest, is
5 it the city's position that there are no scheduled events
6 --

7 MR. MICHAEL BATTLE: That's correct.

8 THE COURT: -- within the city? The activity is
9 the traffic flow that both have in driving, but there's
10 not something at a certain time or certain place for
11 either event during the city?

12 MR. MICHAEL BATTLE: No, sir.

13 THE COURT: Okay. So no permits either way?

14 MR. MICHAEL BATTLE: No permits have been issued
15 or denied?

16 THE COURT: Either way?

17 MR. MICHAEL BATTLE: Either way.

18 THE COURT: Okay.

19 MR. MICHAEL BATTLE: Final test of a preliminary
20 injunction is that government policy, you have to look at
21 the public interest. And the public interests are defined
22 are what are the policies that are in place that would be
23 allowed to unfold? Our government policy is to put safety
24 first. That is our articulated basis. And that's what
25 you would have happen if the city is given the discretion

1 and the flexibility to be able to make changes and be able
2 to operate under its own plans.

3 There is certainly a lot more of a philosophy
4 taking place in the policing world that government
5 policing best is handled on a local community level. And
6 you have all this community policing. You have people
7 establishing relationships. And we have worked very hard
8 with community meetings and trying to establish
9 relationships, sensitivity trainings, deescalation
10 trainings, dealing with crowds, because that's our bread
11 and butter. That's how we make our money in the City of
12 Myrtle Beach. And that's what puts tax dollars into the
13 coffers is that we're trying to find how to make these
14 events safe. And as long as we can keep them safe, people
15 will keep coming.

16 People -- the police need to have the
17 flexibility to use discretion in doing their jobs. And I
18 did not cite the Charlottesville report to give you any
19 example of what had taken place. My only point in that is
20 when the police are not properly instructed and trained
21 and don't know what to do, which is what would happen if
22 we change the plan two and a half weeks before the event,
23 if they're not -- they don't know what to do and they're
24 going to stand back and have a hands-off attitude. That's
25 the only point there.

1 You have people here -- you want to put people
2 in charge of public safety events who are police officers,
3 who are currently on the scene, have intimate knowledge of
4 the complexity and nuances for policing events. They have
5 the education. They have been training for this event,
6 some of them for 20 years. They have the experience of
7 the events. And they know what works best as far as they
8 can tell.

9 They're doing -- as you pointed out, they're
10 doing the best they can. Certainly, you can have Monday
11 morning quarterbacking and criticism. But none of them
12 have come up with anything better except to say go back to
13 2014, which was the failure recognized by every law
14 enforcement agency in the State of South Carolina.

15 Thank you, Judge.

16 **MR. JAMES BATTLE:** Your Honor, we have two
17 witnesses we'd like to call.

18 **THE COURT:** That would be fine.

19 **MR. JAMES BATTLE:** First witness is Captain Joey
20 Crosby.

21 **THE CLERK:** Captain, would you please step
22 forward to be sworn? State your name for the record, sir.

23 **THE WITNESS:** Captain Joey Crosby.

24 **THE CLERK:** Raise your right hand to be sworn.

25 JOEY CROSBY, after being duly sworn, testified

1 as follows:

2 THE WITNESS: Yes, sir, I do.

3 THE CLERK: Thank you, sir. Please take a seat
4 in the stand.

5 DIRECT EXAMINATION

6 BY MR. JAMES BATTLE

7 Q Captain Crosby, where are you employed?

8 A Currently with the Myrtle Beach Police Department.

9 Q How long have you been with the Myrtle Beach Police
10 Department?

11 A 20 years.

12 Q Okay. And what is your current position with the
13 City of Myrtle Beach?

14 A I currently serve as the Captain of Support Services,
15 which includes me being the department's Public
16 Information Officer as well as Special Events Coordinator
17 as it pertains to events in the police department.

18 Q So you're a Captain of Myrtle Beach Police and then
19 your role is to handle special events within the city?

20 A Yes, sir.

21 Q Okay. And this chart that the plaintiffs have
22 brought is a chart of the traffic loop that's put in place
23 during Memorial Day Weekend?

24 A Yes, sir.

25 Q If you could, just come down from the stand and give

1 me a thumbnail sketch or give the Court a thumbnail sketch
2 of how this traffic loop works.

3 **A** Yes, sir.

4 **MS. RAMCHANDANI:** Is it okay if I just come
5 stand over here?

6 **THE COURT:** No problem.

7 **THE WITNESS:** This is an accurate representation
8 of the traffic loop pattern itself. As you know, it
9 begins here on 29th Avenue North. The motorists will
10 travel south on Ocean Boulevard to Kings Highway.

11 At Kings Highway, the motorists will travel
12 north on Kings, making a left-hand turn on Harrelson,
13 across the intercoastal waterway to Waccamaw Boulevard,
14 which runs parallel to 501. At Waccamaw Boulevard, the
15 motorists will then proceed to Dick Scobee Road and Forest
16 Brook Road.

17 Here at this interchange, the motorist has three
18 options. The motorist can either go south on Highway 31,
19 the motorist can go north on 31, they can go towards
20 Conway, or even a fourth option is they can turn around
21 and come back into the city if they so desire.

22 **THE COURT:** On what route?

23 **THE WITNESS:** On Highway 501. If the motorists
24 choose to go on 31, there's message boards indicating that
25 once they get to Robert Grissom Parkway, they'll exit onto

1 Robert Grissom Parkway where the motorists will come back
2 to Bypass 17 traveling south at this intersection, which
3 is 29 North and Bypass 17.

4 The motorist has another option. They can
5 continue south on the Bypass if they choose to. If they
6 choose to turn east or what would be a left-hand turn on
7 29 North, they're back in the traffic pattern.

8 There's three intersections really of importance
9 with this traffic pattern. 29th North and the Bypass,
10 29th North and Oak Street -- I'm sorry, Kings Highway, and
11 then Harrelson Boulevard and Kings Highway. The reason I
12 want to point those out to you is these are where the
13 motorist -- if the motorist turns at this intersection
14 eastbound, they're in the traffic pattern. At 29th and
15 Kings Highway there is cross-traffic north and south. If
16 the motorist chooses to turn eastbound on 29th towards Oak
17 Street, they are then in the traffic pattern. If the
18 motorist --

19 **THE COURT:** I'm sorry, Captain, did you say --
20 is Kings Highway the road that runs parallel to Ocean
21 Boulevard, right?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** And did you say you could get off
24 the loop north or south on Kings Highway?

25 **THE WITNESS:** There is cross-traffic here, Your

1 Honor, where the motorist can go north or south. But if
2 the motorist does choose to go eastbound, they're then in
3 that traffic pattern.

4 THE COURT: It means keep going straight,
5 correct?

6 THE WITNESS: Going towards Ocean Boulevard.

7 THE COURT: Okay.

8 THE WITNESS: They're now in the traffic
9 pattern.

10 THE COURT: Yes, sir.

11 THE WITNESS: And if the motorist gets to
12 Highway 17 and Harrelson Boulevard, then the motorist will
13 be forced to go up Harrelson at that point. That's the
14 only place where you're forced to go in the traffic loop.

15 We spent a considerable amount of time educating
16 the public as to how to navigate this traffic pattern.
17 We've developed a traffic app that's on our website that's
18 similar to Google to where if you will geo-locate yourself
19 and then put in your destination where you're going, the
20 app will take into consideration this traffic pattern and
21 navigate you around so you're not caught in the traffic
22 pattern.

23 We hold several business meetings to where we
24 provide this information to the business community to
25 hopefully encourage them to tell their guests if you have

1 a parking garage on the west side of Ocean Boulevard to
2 utilize that parking garage. The example that was given,
3 if you were at 6th Avenue North and you decide that you
4 want to go northbound, if you're at a parking garage on
5 the west side of Ocean, you can simply exit to Kings
6 Highway, travel north or south to your destination of your
7 choice.

8 **THE COURT:** So you can travel west of Ocean
9 Boulevard?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** As long as you don't start from
12 Ocean Boulevard?

13 **THE WITNESS:** Yes, sir. If you're on the east
14 side -- if you have to travel or park in a traffic --
15 parking garage on the east side, then, yes, sir, you would
16 be. But if you can park on the west side, then you're
17 allowed to get out there.

18 We also provide hanger tags which goes on your
19 rear-view mirror for the hoteliers to give to guests so
20 they have this information, they're knowledgeable as to
21 what the traffic pattern is and how to get to and from.

22 And then finally, we also utilize our social
23 media outlets, which is Facebook and Twitter, to really
24 highlight what this traffic pattern is and give the
25 motorists information.

1 Your Honor, the second traffic pattern that's in
2 place is on Ocean Boulevard, as was noted, which begins at
3 6 a.m. Friday morning. This is a one-way pattern where
4 motorists will travel south on Ocean Boulevard, leaving
5 the northbound lanes for fire, police, EMS, and wreckers
6 to access and provide services to our citizens and guests.

7 Q Thank you, Captain.

8 A Yes, sir.

9 Q Oh, Captain, I'm sorry.

10 A Yes, sir.

11 Q So this loop altogether is 23.1 miles?

12 A Yes, sir.

13 Q Okay. And there are how many exits?

14 A Roughly, there's -- I believe it's -- you can exit
15 off of Ocean Boulevard where there is a red light on Kings
16 Highway with the exception of four emergency lanes. Those
17 four emergency lanes are 16th Avenue North, 8th Avenue
18 North, 6th Avenue South, and 17th Avenue South. Other
19 than that, that leaves seven -- I believe seven avenues
20 that will allow you to get off of Ocean Boulevard.

21 Q Okay. And that's when the travel loop is in place?

22 A That is the other 20 hours of the day.

23 Q I got you.

24 A For the traffic pattern itself, what is commonly
25 known as the traffic loop, those four hours, the only

1 place to get on Ocean Boulevard is 29th Avenue North, and
2 then you will travel around to this exit point here.

3 Q Okay. I got you. So as you said, the loop is
4 23.1 miles?

5 A Yes, sir.

6 Q And then Myrtle Beach has a number of streets that,
7 you know, where you could travel Ocean Boulevard and then
8 make a right, say, you've got Bob Grissom here, you've got
9 Kings Highway. Why is the loop taking people out onto
10 Highway 22 as opposed to one of these streets within the
11 city?

12 A Certainly. We experience major traffic congestion
13 along Kings Highway. I personally have seen the traffic
14 congestion from the center of town, which would be right
15 in this particular area, all the way down into Surfside on
16 Kings Highway. And I literally mean bumper-to-bumper
17 traffic congestion. If we try to navigate this traffic to
18 the Bypass, the Bypass is the only road that is operating
19 freely and flowing freely that would allow you to get to
20 and from your destination.

21 There is a hospital right in this general area here.
22 And there's a hospital right in this general area here.
23 If we were to tie up that traffic pattern there, then
24 police and EMS, particularly EMS would not be able to get
25 to the hospital due to the traffic congestion.

1 Q Okay. Let me ask you -- so this is a -- this traffic
2 pattern is meant to control the traffic during Memorial
3 Day Weekend?

4 A Yes, sir.

5 Q Is the traffic during Memorial Day Weekend similar to
6 traffic you've policed where there's an event, say, a
7 baseball game or a football game where people are coming
8 and leaving?

9 A This is different. As has been stated here several
10 times today, the primary congestion is along Ocean
11 Boulevard, traveling down Ocean Boulevard, which leads to
12 congestion on Kings Highway. So you have the -- the
13 congestion is flowing down south on Ocean Boulevard, which
14 then leads the motorists to get back onto Kings Highway,
15 which really creates a lot of congestion in this area.

16 When you look at a special event, such as a baseball
17 or a football game, or even the County Musicfest that's
18 right in the center of town, you have traffic that's
19 coming pre-event and then you have traffic post-event that
20 you're trying to control in and out. This traffic is
21 flowing constantly, 24 hours a day. There is very little
22 break in this.

23 Q Okay. When the people during Memorial Day Weekend
24 get to Ocean Boulevard, do they want to leave Ocean
25 Boulevard?

1 **A** Typically, no, sir. We have found the majority of
2 the individuals and attendees want to cruise Ocean
3 Boulevard. And what we do during the traffic pattern is
4 we have 815 cameras. Those 815 cameras are utilized by
5 our real-time crime unit. We have individuals that are
6 watching to monitor it, to include our dispatch unit, to
7 advise us are there any traffic congestion problems along
8 the pattern itself.

9 We also incorporate SLED's helicopter, SLED being the
10 South Carolina Law Enforcement Division. That unit flies
11 over this area the entire time of this traffic pattern
12 providing immediate feedback to the ground, to the
13 incident commander advising if there's any problems.

14 What that will allow us to do is if there is a
15 stoppage in traffic along Ocean Boulevard, that officer in
16 that sector is immediately notified. That officer then
17 goes and clears that obstruction and gets that traffic
18 flowing by directing traffic in the roadway.

19 **Q** Okay. And once people get off of Ocean Boulevard,
20 they want to get back to Ocean Boulevard as fast as
21 possible; is that right?

22 **A** Typically, yes, sir.

23 **Q** Okay. And you've -- you just testified to this a
24 little bit. But once the plan is in place and the traffic
25 pattern and the traffic loop, will the Bikefest Task Force

1 or the officers on the ground ever modify it to
2 accommodate what's actually going on on the ground?

3 **A** Yes, sir. An example of that was last year. Due to
4 weather conditions and limited traffic, as there's been
5 indicated the traffic pattern is from 10 to 2, 10 at night
6 to 2 in the morning, due to the conditions, this traffic
7 pattern was stopped early because there was not a need for
8 it. So there was collaboration from our incident
9 commander to the surrounding agencies on the task force
10 and the decision was made to stop the traffic pattern
11 early.

12 **Q** Okay. And there's been a lot of testimony about
13 Harley Week versus Memorial Bike Week. And you've been a
14 police officer in Myrtle Beach for a long time?

15 **A** 20 years, yes, sir.

16 **Q** Okay. Is there a difference between the two events?

17 **A** Yes, sir, in my opinion there is. For the Harley
18 rally in the early years was very similar with the traffic
19 pattern. However, since the 2009 boycott and the passage
20 of the ordinances, many of the motorists will travel from
21 a destination such as their lodging to Murrells Inlet or
22 to North Myrtle Beach. There is very little activity in
23 the City of Myrtle Beach that people attend to. So
24 they're going to and from their destination, not cruising
25 back and forth.

1 Q And then Memorial Day, the focus point is Ocean
2 Boulevard?

3 A Yes, sir.

4 Q Okay.

5 A As a result of the reduction in the traffic and the
6 amount of attendees, that is why our manpower has
7 decreased during Memorial Day -- I'm sorry, during Harley
8 Weekend as a result of that decrease in that traffic.

9 Q Sure.

10 MR. JAMES BATTLE: Thank you, Captain Crosby.

11 CROSS-EXAMINATION

12 BY MS. RAMCHANDANI

13 Q I'm going to move this out a little bit so I can see
14 you.

15 A Yes, ma'am.

16 Q Good afternoon.

17 A Good afternoon.

18 Q Captain Crosby, I just have a couple of questions
19 about the map to make sure I'm understanding the loop
20 correctly.

21 A Yes, ma'am.

22 Q If you had -- if you were standing on the east side
23 of Ocean Boulevard.

24 A Yes, ma'am.

25 Q And you left your hotel and wanted to go to dinner

1 on, let's say, South Ocean Boulevard.

2 A Okay. Yes, ma'am.

3 Q And you leave and you finish dinner after 10 p.m. and
4 it's Black Bike Week weekend, and you want to get back to
5 your hotel, the only way you can do that on Ocean
6 Boulevard, right, is to go all the way around the whole
7 loop?

8 A No, ma'am.

9 Q No?

10 THE WITNESS: Your Honor, may I approach the
11 map?

12 THE COURT: Sure, that would be fine.

13 THE WITNESS: So some destinations would be
14 typically, let's say, in the Surfside, Garden City area.
15 It was past 10 o'clock and you wanted to get back to your
16 hotel, you would simply travel Bypass 17, travel
17 northbound to Joe White Avenue, and Joe White Avenue you
18 would drop into the city. And let's use 21st Avenue
19 North, which is the Breakers hotel. The Breakers hotel
20 has a parking garage on the west side. You would go to
21 21st Avenue North -- 18th, I'm sorry, 18th Avenue North,
22 go to your parking garage, park there at your destination.
23 Now, if you had to park on the east side, same location,
24 you would go to 29th Avenue North and then drop down to
25 your hotel parking lot.

1 Q But if you were at dinner on Ocean Boulevard and you
2 were exiting onto Ocean Boulevard, you would then have to
3 go on the loop all the way around?

4 A So there's a restaurant approximately right here
5 that's called Damon's. If you were eating at Damon's,
6 then, yes, ma'am, you would come and travel this roadway
7 until when you got to 501, turn around and come back into
8 the city. At the city, come back into Joe White and go
9 back to the destination I was telling you about.

10 Q But then if you had to go onto the east side, you
11 would have to come all the way around again?

12 A No, ma'am. Go down 501 northbound on the Bypass, go
13 to 29th North, come down -- or the easiest route would be,
14 again, go to 21st Avenue North, go to 29th, drop down to
15 Ocean Boulevard and go to your destination.

16 Q But the only entrance to Ocean Boulevard is 29th,
17 right?

18 A 29th and Kings Highway and then 29th and the Bypass.

19 Q And those are the only two entrances to Ocean
20 Boulevard?

21 A Yes, ma'am.

22 Q And you would have to traverse all the way up here?

23 A Yes.

24 Q And then take an exit all the way --

25 A Correct, if you want to get on the east side, yes,

1 you're right.

2 Q Okay. I wanted make sure I understood that. Have
3 you done any outreach -- I mean, is the Google app up,
4 ready, and out and working for people?

5 A Yes, ma'am, it's on our website currently.

6 Q You could take it down, right, if you needed to? If
7 you were to change the traffic loop, you could take that
8 app down?

9 A Yes, ma'am.

10 Q And you have police who are on duty and working
11 during Harley Weekend; is that right?

12 A Yes, ma'am.

13 Q And those are police officers who are Myrtle Beach
14 Police Department officers?

15 A Yes, ma'am, and also other officers from outside
16 agencies as well.

17 Q For Harley Weekend?

18 A Yes, ma'am.

19 Q And do some of those same officers police Black Bike
20 Weekend and Memorial Day Weekend?

21 A I'm not sure if some of the same are coming down or
22 not.

23 Q Some of the Myrtle Beach Police Department officers?

24 A From Myrtle Beach, yes, ma'am.

25 Q So those officers are familiar with the pattern

1 that's used during Harley Week?

2 A Yes, ma'am.

3 Q In addition to the pattern that's used during Black
4 Bike Week?

5 A Yes, ma'am.

6 Q Okay. And so if you were to use the same pattern
7 over the two weekends, you would have officers who were
8 familiar with what was happening during the previous
9 weekend during Harley Week, correct?

10 A Yes, ma'am.

11 Q Okay. The -- you mentioned the 815 cameras. Those
12 are up year round in Myrtle Beach, right?

13 A Yes, ma'am.

14 Q So it's not as though that's something you put in
15 place just for Black Bike Week?

16 A No, ma'am.

17 Q So you would have the ability, no matter what the
18 traffic pattern that's in place, to be doing sort of
19 real-time viewing of those cameras and adjusting traffic
20 patterns, congestion, et cetera?

21 A Yes, ma'am. The purpose of those cameras are for
22 traffic management, yes, ma'am.

23 Q And that's something you can do any time --

24 A Yes, ma'am.

25 Q -- of the year? Okay. Have you -- you spoke about

1 last year stopping the loop early on Sunday evening; is
2 that right?

3 A Yes, ma'am.

4 Q That was the last night of the three nights of the
5 weekend?

6 A Yes, ma'am.

7 Q And you ended it about half an hour early; is that
8 right?

9 A I don't recall. I don't have my notes with me, but I
10 don't recall. I do recall it was early. I thought it was
11 a little earlier than that.

12 Q But you don't recall exactly when it was?

13 A No, ma'am.

14 Q Has there ever been a time when you've been watching
15 in real time and you have said, okay, we're going to stop
16 the loop at 10:30 and put it back in place at 11:30?

17 A No, ma'am.

18 Q So it's binary, once it's -- it's on and then it's up
19 and you may take it off, but it's not a back and forth,
20 loop on, loop off?

21 A Right. If there's a need to stop it, such as weather
22 conditions or traffic conditions, that's when we stop it.

23 Q But then you would be done for the evening?

24 A Yes, ma'am.

25 Q You heard Chief Williams testify about the flush-out

1 plan?

2 A Uh-huh.

3 Q That is something that you can put into place and
4 take away throughout the course of an event or an evening;
5 is that right?

6 A No, ma'am, because you need additional manpower for
7 that. And what I mean, that you have additional officers
8 that would need to be needed for the flush-out plans. You
9 would also need to stage the equipment for the flush-out
10 plan as well as there's a great deal of work that would
11 need to be done ahead of time to do that.

12 Q How many officers do you have that come to police
13 during Memorial Day Weekend?

14 A As of today, I have 427 from outside agencies that
15 are coming in.

16 Q And how many of those officers are dedicated to
17 manning the loop during the loop hours?

18 A I couldn't testify to that because I don't have that
19 number to me.

20 Q Could you give us a ballpark or an estimate?

21 A Probably close to 50, roughly; that's including the
22 roadways within inside the city and then what Highway
23 Patrol controls outside of the city.

24 Q And those officers, if they were not manning the
25 loop, perhaps could work on the flush-out plan? Would

1 that be something they could do? You could reutilize
2 those resources?

3 **THE COURT:** If y'all could slow down just a
4 little bit.

5 **Q** If you were to reutilize the resources of the
6 officers who were managing the loop if you no longer had
7 the loop in place, you could use them for a flush-out
8 plan?

9 **A** Being from outside agencies, that would be a
10 considerable amount of time for the education process of
11 that to advise the officers as to where they would be
12 flushing traffic to and how to utilize and set up the
13 equipment.

14 **Q** Could you use some of your Myrtle Beach officers to
15 work on a flush-out plan?

16 **A** Yes, ma'am.

17 **Q** Would you agree that, in general, it is easier to
18 take away plans than it is to put -- to design and put new
19 plans into place?

20 **A** No, ma'am.

21 **Q** No? Okay. Have you sent out -- well, I was looking
22 on your Facebook page, I didn't see any postings about the
23 traffic plan for Memorial Day Weekend up yet; is that
24 correct?

25 **A** No, ma'am, they are up. They were.

1 Q On the Facebook page?

2 A Yes, ma'am.

3 Q And what about for Harley Week? Do you have plans up
4 for Harley Week?

5 A No, ma'am.

6 Q Okay. And you could take the postings down, right,
7 or you could put new postings up on the Facebook page?

8 A Yes, ma'am.

9 Q A flush out is something that you have utilized
10 before for other events?

11 A Yes, ma'am.

12 Q Okay. You've used it for the Carolina Country
13 Musicfest?

14 A No, ma'am.

15 Q You don't?

16 A I have a traffic plan that's in place for that
17 particular event.

18 Q But you allow for a flush out if needed?

19 A If needed, yes, ma'am.

20 Q Are there other events where you've used the
21 flush-out plans?

22 A Flush-out plan is a traffic measured plan that's
23 approved by city council, so it's something --

24 THE COURT REPORTER: I'm sorry, slow down,
25 please.

1 **THE WITNESS:** I talk really fast. I apologize.

2 **THE COURT:** Y'all both slow it down, please.

3 **THE WITNESS:** The traffic flush-out plan has
4 been something that's been approved by our city council
5 that's in our Traffic Management Plan.

6 **Q** Okay. And so does that mean it's something that can
7 be used at any time of year when you need it?

8 **A** We have to stage the equipment properly, tell the
9 officers their assignments. So there is an educational
10 piece to that and a setup piece to that as well.

11 **Q** And you have previously used it in the city; is that
12 right?

13 **A** Not that I recall in recent years, no, ma'am.

14 **Q** Have you ever had it as an optional -- let me show
15 you a document. That may make it easier.

16 **A** Sure.

17 **THE COURT:** Is this one of the exhibits?

18 **MS. RAMCHANDANI:** Yes, it is. I can read you
19 the number. So it's Docket No. 24-27. It's one of the
20 exhibits to the defendant's opposition.

21 **THE COURT:** Okay.

22 **THE WITNESS:** Thank you.

23 **MR. MICHAEL BATTLE:** Which exhibit is it, I'm
24 sorry?

25 **MS. RAMCHANDANI:** It's 24-27. I have a copy for

1 you and one for the Court as well.

2 **THE COURT:** So 24 and 27?

3 **MS. RAMCHANDANI:** No 24-27 of the defense
4 opposition. ECF stamp is on the top there.

5 **THE COURT:** Thank you. So I don't -- maybe
6 I'm -- let me just ask an identification question. I
7 can't tell it from the ECF number. Do you remember what
8 number the defendant gave it in their exhibits?

9 **MS. RAMCHANDANI:** I'm pretty sure it is No. 26,
10 Exhibit 26 to their opposition.

11 **THE COURT:** Okay.

12 **MS. RAMCHANDANI:** So it's the operational plan
13 for the Carolina Country Music Festival.

14 **Q** Is this a document that you recognize, Captain
15 Crosby?

16 **A** Yes, ma'am, it is.

17 **Q** And really, I have the whole document here so you
18 have the whole document. But I'd like to point you to the
19 last section of the first page where it says flush plan.
20 Okay? So here, if there's major traffic congestion during
21 the Carolina Country Music Festival in June of 2017 --

22 **A** Yes, ma'am.

23 **Q** -- you were set up to be able to put in place a flush
24 plan?

25 **A** Yes, ma'am, that is accurate.

1 Q So officers would have been trained on how to do that
2 if it was necessary?

3 A That's correct.

4 Q And those are Myrtle Beach Police Department
5 officers?

6 A Yes, ma'am.

7 THE COURT: Counsel, I don't want to be overly
8 restrictive, but on y'all's cross time, you really only
9 had a few minutes. I'm letting you go, so I'm trying to
10 let you be complete. But I know there's another witness
11 and I want to be fair to everybody.

12 MS. RAMCHANDANI: I'll be wrapping up in just a
13 few more questions. Thank you, Your Honor.

14 Q Captain Crosby, you submitted a video along with the
15 opposition, defense opposition?

16 A Yes, ma'am.

17 Q What did you film that video?

18 A At the request of our city staff or city attorneys
19 that are present today to inform the judge as to what our
20 operational plan is.

21 Q So that is a video you made for this litigation?

22 A Yes, ma'am.

23 Q So it's not a video that you've made in previous
24 years?

25 A No, ma'am.

1 **Q** Okay. There are no other events where you -- in the
2 City of Myrtle Beach where you put in a traffic loop or a
3 traffic plan like the one for Black Bike Week; is that
4 right?

5 **A** No, ma'am.

6 **Q** This is the only one that you do it for?

7 **A** Yes, ma'am.

8 **Q** Okay.

9 **MS. RAMCHANDANI:** Thank you very much.

10 **THE WITNESS:** Uh-huh.

11 **MR. JAMES BATTLE:** No redirect, Your Honor.

12 **THE COURT:** Okay. Thank you. You may step
13 down, Captain.

14 **MS. RAMCHANDANI:** Your Honor, I'm sorry, it was
15 Exhibit 28. So I went down one number instead of up.

16 **THE COURT:** Thank you for clarifying.

17 **MR. JAMES BATTLE:** Your Honor, the city calls to
18 the stand Chief Amy Prock.

19 **THE CLERK:** Ma'am, would you please step forward
20 and be sworn? Could you state your name for the record,
21 ma'am?

22 **THE WITNESS:** Amy Prock, P-R-O-C-K.

23 **THE CLERK:** Thank you. Raise your right hand to
24 be sworn, please.

25 **AMY PROCK,** after being duly sworn, testified as

1 follows:

2 THE WITNESS: Yes, sir.

3 THE CLERK: Thank you, please take a seat in the
4 stand.

5 THE COURT: Just so we -- I'm -- this is for
6 both of y'all. My goal's to be done as close to 15
7 minutes as we can with this witness so we have time for
8 the question session.

9 MR. JAMES BATTLE: Yes, sir.

10 THE COURT: I won't be absolute, but if y'all
11 could work towards that, I would appreciate it.

12 MR. JAMES BATTLE: Yes, sir, I understand, Your
13 Honor. I appreciate brevity just as much as the next
14 person.

15 DIRECT EXAMINATION

16 BY MR. JAMES BATTLE

17 Q Chief Prock, where do you work?

18 A Myrtle Beach Police Department.

19 Q What is your position at the Myrtle Beach Police
20 Department?

21 A I'm Chief of Police.

22 Q And how long have you been at the Myrtle Beach Police
23 Department?

24 A 22 years.

25 Q Okay. I want to ask you a little bit about the

1 traffic pattern and the traffic loop for 2018. When did
2 the Bikefest Task Force start planning for this Memorial
3 Day Weekend that's approximately three weeks away?

4 A The task force actually started working on this in
5 January of this year, the Bike Task Force. The City of
6 Myrtle Beach actually starts their planning back in
7 August. The City of Myrtle Beach coordination actually
8 includes all of our city departments, to include fire,
9 public works, like I said, all of our city departments.

10 Q Okay. And tell me, what is involved -- what all goes
11 into creating this plan?

12 A That includes utilizing all of our resources,
13 manpower, equipment, communications between all of our
14 departments, in addition to all of the manpower resources
15 throughout our local agencies and our state agencies.

16 Q Okay. What are the expenses that the City of Myrtle
17 Beach has already made to put this plan into place?

18 A We have already purchased several items to replace
19 equipment that was damaged in previous years, in addition
20 to additional equipment, rentals as Captain Crosby alluded
21 to, message boards, arrow boards that are required of this
22 plan that was approved through the Department of
23 Transportation, in addition to manpower that we will have
24 to also pay for.

25 Q Okay. Do you have a dollar figure in mind?

1 **A** Right now we're in upwards of 300,000, but we will be
2 in upwards of 600,000 after the planning process is
3 complete.

4 **Q** Okay. So let me ask you, why did the Bikefest Task
5 Force create this traffic pattern? Why does this exist?

6 **A** In 2014 and in years prior to that, we started
7 evaluating several things that were occurring during
8 Memorial Day Weekend. Not only the calls for service, our
9 ability to respond to calls for service, in addition to
10 our response times, in addition to some of the types of
11 crimes that were occurring during Memorial Day Weekend.
12 And we wanted to be able to provide the utmost public
13 safety to everyone. That included evaluating the
14 after-action reports provided by our assisting agencies
15 that were coming down from all over the state, to include
16 local, county, as well as state agencies.

17 **Q** Okay. Tell me what are the benefits that are
18 provided by this traffic pattern for the city in providing
19 services? What do we get out of this?

20 **A** The one-way traffic plan on Ocean Boulevard assists
21 us to be able to respond to calls for service quicker,
22 especially in the Ocean Boulevard area. The loop itself,
23 especially during the timeframes, assist us in responding
24 to calls for service throughout the city. The congested
25 areas, as Captain Crosby and several other witnesses have

1 alluded to, is the congestion in the area. This
2 congestion is not just in the Ocean Boulevard area, but
3 also on our major thoroughfares and that is why we
4 developed the loop.

5 We had the opportunity in 2014 to have a summit that
6 was created by Chief Gall, who brought in agencies from
7 all over our nation to listen to how they effectively
8 managed events and also listened to our Department of
9 Transportation to see how we could manage the event
10 better. We took all of this into consideration. We met
11 with our state leaders as well as our executive leadership
12 throughout the Horry County and Georgetown area and were
13 able to develop this plan.

14 **Q** Okay. So after 2014, there was a summit held with
15 other agencies from around the state. Take me through how
16 this plan came about after that.

17 **A** We actually had worked over the last several years in
18 Myrtle Beach to be able to develop plans that would help
19 with things that I've already mentioned. First, we
20 actually looked at Ocean Boulevard as this was the most
21 congested area. And that was back in the late 90's. We
22 provided a plan where we actually had blocked off 7th
23 Avenue North to 11th Avenue North in an effort to address
24 the most congested area to what we had determined. That
25 was a failure on our part. It created more of a

1 party-like atmosphere in the roadway.

2 So the next year, we looked at one-way traffic --
3 excuse me, two-way traffic with an emergency lane on Ocean
4 Boulevard. That unfortunately, was not successful as well
5 because we could not get our emergency vehicles -- we
6 couldn't get fire trucks or EMS across traffic to the
7 Boulevard to be able to respond to calls for service.

8 Several years later, we -- and as we continued to
9 work towards how to be successful with this event, we did
10 the one-way traffic pattern on south -- south lanes were
11 blocked -- or excuse me, southbound traffic was to the
12 public and northbound traffic was to our emergency
13 vehicles, to include fire, EMS, police, as well as our
14 wreckers. And that was successful. In 2015, we added the
15 traffic diversion plan to that.

16 Q Okay.

17 A That has been the most successful. And that was the
18 plan that we came together with the Bikefest Task Force.

19 Q Okay. So in other words, what you're saying is
20 there's been four iterations of some type of regulation on
21 Memorial Day Weekend?

22 A Yes, sir.

23 Q And you've been a police officer in Myrtle Beach for
24 all four of those iterations?

25 A I have.

1 Q Which one was the most successful?

2 A The one that we are doing now, which is from 2015 on,
3 the traffic diversion plan with the one-way traffic as
4 well as with the traffic diversion plan.

5 Q Okay. And this traffic diversion plan -- so you had
6 the summit and then it went to a Coastal Alliance Group?

7 A Yes, sir.

8 Q Tell me about that.

9 A The Coastal Alliance is made up of all our local
10 majors, and then it goes to the Bikefest Task Force, where
11 we work together to address the concerns during Memorial
12 Day Weekend.

13 Q Okay. So when Memorial Day Weekend comes, you have
14 operation plans for each area? Tell me how that works.

15 A All of the municipalities in the area, obviously,
16 work together to address the needs of their area. We have
17 an operational plan here in Myrtle Beach. North Myrtle
18 Beach has an operational plan in their area, Horry County.
19 Then we work together as we meet at the Bike Task Force
20 and develop our plans together and fit them together to
21 address these issues, to address the weekend.

22 Q Okay. So you've got the City of Myrtle Beach
23 operations plan, an Horry County operations plan, South
24 Carolina Highway Patrol operations plan?

25 A Correct.

1 Q And they're all brought under this umbrella?

2 A Correct.

3 Q Of the Bikefest Task Force?

4 A Correct.

5 Q In your estimation in policing this event for all 22
6 years that you were with Myrtle Beach Police Department,
7 what would happen if this traffic loop was taken away and
8 Ocean Boulevard was made a two-way street?

9 A I think we'd have some major public safety issues, to
10 include the issues where our calls for service would
11 increase. We would have problems responding to calls for
12 service. And when I say we, that would include all of our
13 public safety, to include fire, EMS, police would not be
14 able to respond to calls for service. In addition to
15 responding for calls for service, the increase in time to
16 be able to respond. So we would have major issues with
17 responding, and all over just a public safety incident.

18 Q Sure. And in your years of policing, you've policed
19 Memorial Day Weekend and Harley Week?

20 A I have.

21 Q Are those two events the same?

22 A They are not.

23 Q How are they different?

24 A The population during Memorial Day Weekend is
25 significantly different as far as the numbers. The

1 attendees during Memorial Day Weekend concentrate in the
2 Ocean Boulevard area. During Harley Weekend, those areas
3 are concentrated in Pawley's Island, Murrells Inlet,
4 Little River, coming in and out of the city, not staying
5 in the Ocean Boulevard area.

6 **Q** And that came about in 2009, is that your
7 recollection?

8 **A** Correct.

9 **Q** What happened in 2009?

10 **A** The city enacted some ordinances that many of the
11 Harley riders decided to boycott Myrtle Beach. And that
12 has continued from here -- from 2009 forward.

13 **Q** Okay. So they've maintained that boycott?

14 **A** They have.

15 **MR. JAMES BATTLE:** That's all I have, Your
16 Honor.

17 **THE COURT:** Cross-examination?

18 **MR. COLFAX:** Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. COLFAX**

21 **Q** Good afternoon, Chief Prock.

22 **A** Good afternoon, sir.

23 **Q** You discussed a little bit about some of the costs
24 that have already been expended by the City of Myrtle
25 Beach. You're not suggesting that the judge weigh those

1 costs against the constitutional rights of the attendees
2 of Black Bike Week for this?

3 A I am not. That was a question that was asked of me,
4 sir.

5 Q Okay. Thank you. You talked about this process you
6 went through of evaluating traffic plans in the past and
7 attending this summit. Are there any analyses or data
8 that you collected and looked at through this process that
9 were not part of the preliminary injunction briefing that
10 has been submitted to the Court? Is there some analysis
11 that we haven't seen?

12 A Not to my knowledge. We provided the calls for
13 service, we provided the response times.

14 Q And then you talked a bit about the response times.
15 And that sounded like that was a significant aspect of
16 what you were looking at when deciding to implement that
17 loop; is that right?

18 A That was one of many.

19 Q Okay. Was it a significant factor?

20 A That was one of many, uh-huh.

21 Q What other reasons would there be other than response
22 times for preserving that emergency lane access on Ocean
23 Boulevard?

24 A I'm sorry, one more time?

25 Q You said that there were many considerations going

1 into the traffic plan beyond the calls for service and
2 response times?

3 A It's access. We wanted to have -- be able to access
4 Ocean Boulevard and the other areas in the city.

5 Q Okay. And what data -- other than the response
6 times, what data did you look at in terms of the
7 effectiveness of having that dedicated emergency lane?

8 A Some of the complaints and concerns that came into
9 the city.

10 Q Did you receive complaints and concerns by attendees
11 saying that they could not move around the city because
12 traffic congestion was so bad because of the loop?

13 A We have a very active neighborhood watch group, watch
14 groups throughout the city, so we're able to communicate
15 with our city residents. So that was one, in addition to
16 several of our complaints that came in in reference to
17 congestion. But these are some things that we evaluated
18 not only prior to the traffic loop -- or excuse me, not
19 only after the traffic loop, but prior to as well.

20 Q But you heard Dr. Clarke testify that during Black
21 Bike Week in 2017, he observed that the traffic
22 conditions, he called it, was degraded; that the traffic
23 plan aggravated traffic and basically made traffic slow
24 and unstable. Would you agree with that?

25 A I wouldn't.

1 Q You think traffic moved well during the loop hours
2 during Black Bike Week 2017?

3 A I would say that it moved at a pace that was
4 considerable for the pattern being put into play.

5 Q Okay. But the pattern actually slowed down traffic.
6 And you wouldn't dispute the fact that it could take
7 someone as much as six hours to travel the entirety of the
8 loop?

9 A We didn't measure the time.

10 Q Wouldn't that be an important part of an analysis
11 that you would do to determine the effect of the loop on
12 the event?

13 A I said our focus was on the actual calls for
14 servicing being able to respond, making sure that the
15 incidents and calls for service were being addressed.

16 Q Let me --

17 If I may approach, Your Honor?

18 -- and show you what the city presented as its
19 Exhibit 24, which is the calls of service.

20 THE COURT: This is -- just so we're clear, this
21 is Exhibit 24 to the defendant's memorandum in opposition?

22 MR. COLFAX: Correct.

23 THE COURT: Okay.

24 MR. COLFAX: And I'm sorry, I only have one
25 copy.

1 **THE COURT:** That's fine. We've got it.

2 **Q** The first year that the traffic loop and the traffic
3 plan was put into place as the current iteration, that was
4 2015, correct?

5 **A** Correct.

6 **Q** Of all of that data that you have in front of you of
7 response times from the Myrtle Beach Police Department,
8 2015 was the second highest response time; is that not
9 correct?

10 **A** It was. It was the first time we put it in, you're
11 correct.

12 **Q** So the traffic loop was unsuccessful in 2015 by your
13 measure because the response times were, in fact, longer
14 than 2012 and 2013?

15 **A** That's your opinion. In my opinion, it was something
16 that was the first time we put it into play. We needed to
17 work at getting better. And as you can see, went down to
18 2.47 in 2016.

19 **Q** And what did you change to make it better?

20 **A** We increased training, we increased equipment, we
21 evaluated it.

22 **Q** And what evidence do you have that there was a causal
23 connection between those response times and the traffic
24 plan you put in place?

25 **A** I don't. What I have is the knowledge of my team and

1 I have the knowledge of the officers that were on scene
2 and I have the knowledge of those that evaluated it along
3 with me.

4 Q But you did not do any analysis of the actual
5 movement of traffic --

6 A I did not.

7 Q -- in the loop?

8 A I worked with the Department of Transportation when
9 we put the plan together, in addition to the other members
10 of our task force who assisted with the traffic loop.

11 Q But you did receive -- the Myrtle Beach Police
12 Department did receive numerous complaints from tourists
13 in the area during Black Bike Week complaining about the
14 traffic that was created by the one-way traffic plan of
15 the loop?

16 A We did, which is why we increased our social media,
17 our outreach to our community, our outreach to our
18 visitors so that they would be aware of what they needed
19 to know before they came to Myrtle Beach to address the
20 areas with the traffic loop.

21 Q Your counsel talked about the fact that the Bikefest
22 Task Force has some responsibility related to the traffic
23 plan. But you stated in your affidavit that the city, and
24 I assume that's probably you, have the power to close the
25 loop at any time if the city so desired?

1 A The city in conjunction with those members of the
2 task force.

3 Q Well, in your declaration, did you not say the city
4 can close the loop?

5 A The city can, but the city in conjunction. I work
6 with my partners.

7 Q If you, for whatever reason, couldn't get ahold of
8 your partners and you decided to close the loop, you could
9 do that?

10 A If it was an absolute emergency and that would be
11 necessary, yes, sir, just like they would as well.

12 Q And when you close the loop, that would be the
13 entirety of it from the area in Myrtle Beach's
14 jurisdiction as well as outside?

15 A I wouldn't be working outside of my jurisdiction,
16 sir.

17 MR. COLFAX: Thank you. Nothing further.

18 MR. JAMES BATTLE: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. JAMES BATTLE

21 Q Chief Prock, was there ever a fire at a hotel during
22 Memorial Day Weekend?

23 A There was.

24 Q Tell me about that.

25 A Landmark Resort, two years ago -- or excuse me, three

1 years ago where we could not respond to the incident quick
2 enough to be able to assist those getting out
3 appropriately.

4 Q And what did the fire personnel have to do?

5 A Actually had to wait until we had a significant
6 amount of people to be able to block traffic in order to
7 get to the incident itself.

8 Q Okay. Have you heard of EMTs having to walk to
9 emergency situations?

10 A Yes, especially during 2014 when we had nine
11 shootings.

12 Q Okay. Last year, 2017, there was a fatality,
13 motorcycle accident on Oak Street?

14 A There was.

15 Q Tell me about that.

16 A We had -- it was just close to evening hours, at
17 dusk, and a motorcyclist was exceeding the speed limit at
18 Oak Street. And a vehicle had pulled out and the vehicle
19 did not see him. And unfortunately, he had missed -- the
20 vehicle missed the motorcyclist and he passed.

21 Q Okay. And so that was in 2017?

22 A It was.

23 Q Have we made changes to accommodate that situation
24 for this upcoming weekend?

25 A We have.

1 Q Okay. Tell me about that.

2 A What we do when -- every year, we have an
3 after-action report. As several people have alluded to
4 today, we've evaluated the after-action report to include
5 our traffic congestion area in addition to traffic
6 enforcement. That was one of the directives that we added
7 is the Oak Street area because it has been used as a -- as
8 parallel to Kings Highway and to the bypass. And it was
9 seen as an area where some of our motorcyclists were
10 utilizing excessive speed.

11 Q Okay. So that's a change that's occurred from 2017
12 to 2018?

13 A Yes, sir.

14 MR. JAMES BATTLE: No further questions, Your
15 Honor.

16 THE COURT: All right.
17 You can step down, Chief.

18 THE WITNESS: Thank you.

19 THE COURT: I'd like to proceed to some
20 questions we have. Our court reporter is good and she'll
21 let me know if we need to take a break. Thank y'all for
22 working efficiently to get a lot of information for us to
23 consider in that period of time. We appreciate that.

24 I have a series of questions. I'm going to
25 start with the plaintiff. Then I have one for the

1 defendant. Who I'm starting with doesn't suggest anything
2 other than I started with the plaintiff. So let me
3 address these. And many of these have been already
4 accomplished.

5 I asked -- Mr. Colfax, I asked Mr. Battle if
6 there were any permitted events within the city for either
7 Bikefest or Harley Week and he said no. Do you agree with
8 that?

9 **MR. COLFAX:** To my understanding, yes. And I
10 would imagine he would be the keeper of that knowledge.
11 The city would issue the permits.

12 **THE COURT:** I figured. And likewise, is there
13 any -- in either week, are there any non-permitted events
14 that are somewhere on a schedule in the city that says,
15 hey, at this time we're doing this within the city for
16 either of the weeks to your knowledge?

17 **MR. COLFAX:** I am not aware of any. I, like
18 Mr. Battle, have an understanding that a substantial
19 amount of the Harley riders go and do events in and around
20 Murrells Inlet. And, similarly, during Black Bike Week, a
21 lot of the riders go up to the Atlantic Beach area.

22 **THE COURT:** Okay. We talked a little bit about
23 Judge Wooten's order. You included that in some of your
24 presentation and I think already discussed the fact that
25 this Court, at least on the legal side, you were really I

1 think talking about the factual record, particularly about
2 comments. And -- but I think you acknowledged -- and I
3 just want to make sure that we're clear on the standard
4 that this Court needs to apply. My understanding from the
5 research we've done is that we need to apply the standard
6 that the Supreme Court set out in Winter and the Fourth
7 Circuit has adopted in the Real Truth About Obama case,
8 which is different than the Blackwelder standard that was
9 in place before. Your presentation tracked that, so it
10 looks like we're in agreement with that?

11 **MR. COLFAX:** I believe we are in agreement, yes.

12 **THE COURT:** All right. Now, we talked about --
13 while we're talking about standards, the mandatory versus
14 prohibitory issue, and you and I already covered the
15 challenge of discerning exactly what that means. But I do
16 want to deal with this issue about, I guess, whether it
17 is -- that the relief the plaintiff seeks is seeking to
18 maintain the status quo or alter the status quo.

19 And I understood the arguments. I think you
20 were twofold. One was that it was maintaining the status
21 quo because you considered the status quo the situation
22 during the rest of the year other than Memorial Day
23 Weekend. I understood that. And then I think you also
24 claimed that the last, I guess, non-disputed time was back
25 before 2014, correct?

1 MR. COLFAX: That is correct.

2 THE COURT: Those were the two arguments you
3 made?

4 MR. COLFAX: That's correct.

5 THE COURT: I may have misstated them a little
6 bit.

7 MR. COLFAX: You did better than I did.

8 THE COURT: Well, I doubt that. I don't have a
9 question about the first issue you talked about.

10 But regarding the second issue about going back,
11 and I read the cases that you cited in your brief, but I
12 did not see a case that, in all candor, went back over
13 three years like this and claimed that was the last
14 contested week. And so it looks like the position, while
15 I understand it, is going back further in time than the
16 authority you cited. Would you agree with that?

17 MR. COLFAX: I would agree with that. I think
18 that this situation is a bit unique because you have --
19 and it really goes to both arguments because you have just
20 an event that happens at one point in time. So, yes, you
21 could look at it as going back three years or also as just
22 this is -- there have been three events that have
23 occurred.

24 So it's not like there isn't a policy or a law
25 that's been in place for three years. It is -- and I

1 anticipate the city would not disagree with the concept of
2 they look at this every year, or at least we hope that
3 they look at it every year, and make an independent
4 decision of what sort of traffic plan we should put in
5 place.

6 **THE COURT:** Why didn't the city -- why didn't
7 the plaintiff bring suit before the 2015, '16, or '17
8 events?

9 **MR. COLFAX:** I think primarily -- and there was
10 some discussion about this with Chief Williams is they
11 hoped to work it out. The plaintiffs and the NAACP, in
12 particular, has been through this before.

13 **THE COURT:** Sure.

14 **MR. COLFAX:** And got a result that I think they
15 were satisfied with and helped the event for that time
16 period that the consent order was in place.

17 But, you know, when it came back, I think the
18 first reaction was let's see if we can work it out. And
19 that's why Chief Williams came up. He's articulated, you
20 know, I might not have given the plan I wanted to, but I
21 gave sort of a compromised plan that hopefully we could
22 make it better than this extraordinarily restrictive plan
23 they have in place. And of course, the first time the
24 plaintiffs would have been aware of it would have been in
25 2015.

1 **THE COURT:** That's right.

2 **MR. COLFAX:** 2016 and even before 2017, Chief
3 Williams was proposing some alternative and nothing was
4 accepted.

5 **THE COURT:** And that question, I don't think,
6 goes to ultimately who will prevail in the lawsuit, but I
7 think it's pertinent to the injunction situation we're
8 dealing with and my followup is related to that. Are you
9 aware in the cases you cited where a court has awarded an
10 injunction after an event that's been in place three
11 years? And you've made a distinction that it's not
12 continuous in effect for three years. Set that issue
13 aside, which I understand. But, you know, when you've had
14 an event that, at least, has recurred for three years
15 where a court intervened and issued an injunction with
16 that period of time?

17 **MR. COLFAX:** I am not aware. You know, in some
18 of the parade cases, I truthfully don't know the history
19 of whether folks had attempted to, like, march in their
20 parade in their uniforms in prior years or not. I don't
21 know.

22 **THE COURT:** Okay.

23 **MR. COLFAX:** But again, I think it is
24 significant to note that when you're looking at the
25 potential violation of folks' constitutional rights.

1 **THE COURT:** Right.

2 **MR. COLFAX:** The fact that an event has occurred
3 or even if a policy -- or unconstitutional law or policy
4 has been in place for some substantial period of time, it
5 really should not be a significant factor to that person.
6 And of course, we have individuals here, some had been to
7 past Black Bike Weeks, some had not, that they -- they are
8 somehow, you know, not weighed the same, their interests
9 are not weighed the same given the fact this has been in
10 place for a substantial period of time. And of course,
11 part of our argument, of course, is that the city should
12 have looked at the actual results of this traffic plan.

13 **THE COURT:** Right.

14 **MR. COLFAX:** There's this -- we want --
15 everybody wants this to be a safe event. And if the
16 traffic plan -- if they came in with some analysis and
17 showed us, yes, this traffic plan actually works, then
18 there would be a different reaction. We wouldn't be here.
19 So it would take some time for the plaintiffs to see it's
20 not working.

21 **THE COURT:** Right.

22 **MR. COLFAX:** The promise that this is going to
23 make this a safer event has not actually come true. So
24 we're going to try to work with them. If it works, great,
25 we can come to some compromise; if it doesn't, here we

1 are.

2 **THE COURT:** And again, I think those points -- I
3 get the constitutional part. I think where you're talking
4 about constitutional violations, the irreparable harm
5 issue is very different than if you're not. So we get
6 that analysis. But the other issues I hear, you may be
7 less -- may be more appropriate for the ultimate
8 disposition than an injunction, but perhaps not. So I
9 understand that.

10 Let me -- you mentioned the consent order. And
11 I know you've got -- co-counsel handed you a note. If --

12 **MR. COLFAX:** It's fine.

13 **THE COURT:** I was just in your shoes not too
14 long ago and I got handed things that I overlooked. So if
15 you want to follow up on any point.

16 **MR. COLFAX:** No, that's fine. That was
17 something they don't teach you in law school, but you've
18 got to learn really fast when you stand up in court that
19 information will be coming from all sides. You've got to
20 process it and keep going.

21 **THE COURT:** No, you're doing great. All I'm
22 saying is don't worry about if you get information and
23 want to go back at any point, that's no trouble.

24 **MR. COLFAX:** I appreciate it.

25 **THE COURT:** The consent order, and I don't have

1 that at my fingertips, it's in our record, but I think my
2 memory is that the parties agreed in '05, I think around
3 '05 to a plan that, in essence, was this. In essence, was
4 that there needed to be similar traffic regulations
5 from -- up until midnight. And I think till some -- like,
6 2 o'clock, from 2 o'clock p.m. until midnight. And then
7 after midnight until 2 o'clock the next day, the city had
8 discretion about what plan it could put in place. Is that
9 your understanding in a real probably crude and rough way?

10 **MR. COLFAX:** Yeah, and I think you're right, the
11 key to it was the two events would be treated equally.

12 **THE COURT:** But was that the required -- was
13 that required after midnight?

14 **MR. COLFAX:** I don't think -- I think you're
15 correct, it was not required after, right, for the primary
16 period of time where the plaintiffs had whatever. I
17 wasn't counsel at the time.

18 **THE COURT:** Okay.

19 **MR. COLFAX:** For whatever reason, that they had
20 the greatest interest of what the traffic plans would be,
21 the requirement would be they would be treated equally.

22 **THE COURT:** And I don't know everyone's intent.
23 I certainly wasn't involved either. But I do believe that
24 the -- and that consent order, it allowed for different
25 treatment after midnight until 2 the next afternoon, I

1 think.

2 MR. COLFAX: I think you're correct. I
3 definitely have no reason to dispute that.

4 THE COURT: All right.

5 MR. COLFAX: I anticipate, though, the
6 differences were significant and there wasn't some very
7 good explanation of why, then probably be back in front of
8 Judge Wooten.

9 THE COURT: Probably had to be rationally based
10 in some way. That's fair enough.

11 So -- and just to the other point, I think we
12 talked about this, that the standard for an injunction had
13 changed, I think, in '08 when the Winter case came out and
14 very recently when the Real Truth About Obama case came
15 out. I think that -- I know you mentioned earlier that
16 there was in some sense a more developed record because
17 discovery had taken place. I appreciate that. Is there
18 any --

19 And I'll ask this of the city, too.

20 But whatever the record was, whether it was more
21 advanced or not, would you -- it's a different record
22 before us than it was in front of Judge Wooten. Do you
23 agree with that? Maybe you don't, maybe you don't think
24 it's a material difference.

25 MR. COLFAX: It's a different record.

1 **THE COURT:** Right.

2 **MR. COLFAX:** Aspects of that record is relevant
3 to the -- are relevant to the decision today because the
4 history of the traffic plans for Black Bike Week is
5 relevant under Arlington Heights.

6 **THE COURT:** I understand that.

7 **MR. COLFAX:** So that record, you know, is
8 certainly relevant. I think the most significant aspect,
9 and the one that is worth focusing on, is how much more
10 restrictive this traffic plan is. And that there is not
11 additional analysis or data collection that has been done
12 to explain why, you know, we had a traffic plan that was,
13 you know, rejected as likely discriminatory back in 2005,
14 and now we have a plan that is even more restrictive. It
15 seems, if anything, that would heighten the awareness of
16 the city of we've got to really button this up and shore
17 up why we're doing this.

18 **THE COURT:** There is an intermediary decision
19 that is part of the history, too, that I know you have a
20 view on. The city has a different view. And I -- but
21 there is something that said that injunction is stayed.
22 Whatever the reason, you point out that it's not the most
23 robust opinion ever and that may be significant. I don't
24 know what it means.

25 **MR. COLFAX:** Right. I agree with you. I

1 can't -- we can't read what Judge Luttig had in mind or
2 why he stated with no comment on the merits.

3 **THE COURT:** Let me ask you -- and I'm getting
4 near the end. I appreciate your answering these
5 questions. In some of the things, I think these are a lot
6 of the plaintiff's exhibits or most of these came from the
7 plaintiffs, there was -- it may have been some of the
8 emails that responded to the citizen or local complaints.
9 But the point that -- and you identified some of the
10 language there that, you know, that is concerning to the
11 plaintiffs and, quite frankly, regardless of how I'm going
12 to rule, to the Court, too, for that matter.

13 But it looks like those documents show that the
14 Harley Week attendees got equally mad at the city. And
15 after '08, '09, and I think there was the helmet issue and
16 there was something to do with the muffler issue, at least
17 the record before me looks like the Harley Week folks got
18 mad at the city, too. And you know, we haven't heard from
19 a Harley Week witness, so to speak. Well, maybe we did.
20 There may be some declarations of people who attended. I
21 think there were, in fact.

22 **MR. COLFAX:** Right.

23 **THE COURT:** But I guess my point is, does the
24 fact that both participants in Bikefest and participants
25 in Harley Week in different times have been mad about

1 regulations show that the regulatory efforts of the city,
2 whether they're the best regulations in the world, aren't
3 racially motivated?

4 **MR. COLFAX:** Well, I don't think so. And
5 particularly because we have to look at the regulations
6 that are before us now, and traffic plan for Black Bike
7 Week, nothing for Harley Week. The helmet law applied
8 across the board.

9 **THE COURT:** Right.

10 **MR. COLFAX:** The nuisance ordinances that also
11 made bikers angry applied across the board. But this is
12 an instance where it's not applied across the board. It
13 is only applied to Black Bike Week.

14 **THE COURT:** I understand.

15 **MR. COLFAX:** And we don't know that, you know,
16 the purpose of the helmet law or the other ordinances was
17 to end Harley and Black Bike Week, right? So I don't
18 think -- because they are taking some actions that apply
19 to both, in a way -- that are in a way adverse to both
20 events, I don't think suggest that this is equal
21 treatment, equal bad treatment by the city, right? It is
22 some -- obviously, it's some acts by the city of the
23 events. But I don't know that we can read into it that
24 they -- they're trying to end both events.

25 **THE COURT:** Whatever event -- whatever

1 inferences come from that, you would concede, I think
2 under Arlington Heights, that's part of the history, too,
3 whether the inferences of it, you know, may be different
4 from the city and the plaintiff. But we should look at
5 the history with all the information as part of that
6 Arlington -- I think it was the Arlington Heights factors
7 for discriminatory intent. Is that correct?

8 **MR. COLFAX:** So Arlington Heights would ask us
9 to look at the history of the development and
10 implementation of the acts -- of the act that's being
11 challenged.

12 **THE COURT:** Yes, sir.

13 **MR. COLFAX:** So the act that's being challenged
14 is the traffic plan. So going back through history in all
15 aspects of how the city has treated traffic for Harley
16 Week, for Black Bike Week, for other similarly situated
17 events, I think all of that is relevant. Other acts that
18 the city may take against either Black Bike Week or Harley
19 Week begins to be much more removed from that history if
20 it's not somehow linked to the traffic plan that's
21 actually being challenged.

22 So to the extent, you know, there is bad
23 treatment of Harley Week, I don't think that is, you know
24 -- I don't think there's any basis to infer that that is,
25 you know, a finding that could be relevant here that Black

1 Bike Week is being treated just the same as Harley Week.

2 THE COURT: Is there a traffic -- this was
3 mentioned in the briefs. Is there a traffic loop that
4 Atlantic Beach employs during Memorial Day Weekend?

5 MR. COLFAX: My understanding that there is some
6 form of a traffic loop, but it is very small. And it is
7 short and small. I don't exactly understand how -- I have
8 not observed it. And in 2017, our experts didn't get
9 there to observe it. But beyond that, I don't know.

10 THE COURT: Okay.

11 MR. COLFAX: Beyond the fact that it's short and
12 small and have no knowledge -- and I don't think there's
13 any knowledge or any evidence in the record about the
14 impact of that on traffic. I mean, the mere fact it's --
15 that there is a traffic loop does not suggest that of
16 itself that it's in any way equal to what's happening in
17 Myrtle Beach.

18 THE COURT: The plaintiff's objected to three
19 videos that the city attached. And I understand the
20 objection was that they weren't -- I think it was that the
21 foundation for them had not been established for purposes
22 of this hearing. The Court overruled that objection. I
23 addressed that earlier.

24 Is there a belief -- and you're entitled to
25 challenge it just on the foundation basis. But is there a

1 belief on the plaintiff's standpoint that those were not
2 true and accurate depictions of events during Memorial Day
3 Weekend 2014?

4 **MR. COLFAX:** Well, to a large extent, our
5 objection to the video was preserving an objection
6 depending on how the defendants might possibly use it.
7 For example, the so-called block party videos where
8 there's a video of folks dancing in the street, it appears
9 to us that was actually happening on Kings Highway.

10 **THE COURT:** Okay.

11 **MR. COLFAX:** And not on Ocean Boulevard. So if
12 that is being introduced to suggest we need to control
13 traffic, keep traffic and people off of Ocean Boulevard,
14 doesn't seem to be relevant evidence. And so to that -- I
15 have no idea whether or not that actually happened during
16 Black Bike Week. You know, I've seen it on the internet
17 and I don't know if the city got it off the internet as
18 well. So we're just taking whoever posted's word that it
19 happened at Black Bike Week, but I have no reason to say
20 it was not.

21 **THE COURT:** That's what I was getting at. We'll
22 have to deal, perhaps later, with more precise evidentiary
23 issues. But you've answered my question.

24 **MR. COLFAX:** And I would just mention on the
25 shooting video, again, it's -- I think it's the same

1 thing. I mean, I have no reason to dispute that that's
2 not -- or dispute that that is a video of the -- of one of
3 the shootings that happened during the 2014 Black Bike
4 Week.

5 But I also don't want to get into, you know,
6 videos of violence in Myrtle Beach through the years. As
7 we talked about in our brief, there was a shooting during
8 Father's Day that was actually played live on Facebook as
9 it was happening. And again, obviously, the city didn't
10 react to that by saying let's put in a traffic plan during
11 the whole summer because this could happen at any time and
12 we need to be able to access and respond to emergencies
13 and sort of curb violence.

14 So I think that's the primary objection to that
15 is really what's the relevance of that shooting? Just
16 seeing the fact that it happened relative to the traffic
17 loop that we're discussing?

18 **THE COURT:** Okay. I about asked a question that
19 probably was improper. Not the topic, I hope.

20 Respond, please, to the argument that the city
21 made that the Court's jurisdiction is limited in terms of
22 the relief sought because it necessarily involves entities
23 that are not parties to this case.

24 **MR. COLFAX:** Well, we made some arguments in our
25 brief, which I'll get to in a second.

1 **THE COURT:** Okay.

2 **MR. COLFAX:** But Chief Prock just said the city
3 can close the loop. If the situation so demanded, the
4 city could end the loop on its own accord. And so, if the
5 Court were to order the city not to participate in the
6 loop, at least the loop within the jurisdiction of the
7 city could be ended. And the loop outside the
8 jurisdiction of the city just would be essentially
9 irrelevant at that point, right? Because, obviously, the
10 loop is all about Ocean Boulevard. I don't think anybody
11 disputes that, right? It's getting cars -- controlling
12 how cars get on and off Ocean Boulevard and then pushing
13 them a long way around to keep them out of Myrtle Beach
14 for as long as possible and putting them back at the
15 beginning of Ocean Boulevard.

16 **THE COURT:** The task force, you don't believe,
17 and the entities that composed it, are necessary parties
18 to this lawsuit?

19 **MR. COLFAX:** I don't see that they are. The
20 task force itself is not an entity that could command that
21 the City of Myrtle Beach do anything.

22 **THE COURT:** But it was the group -- you're
23 right, it's kind of an affiliation of some sort, maybe
24 without binding authority on any of the occupants, other
25 than to the extent they agree to be part of it. But that

1 is the group, isn't it, that decided on the traffic plan?

2 **MR. COLFAX:** They developed the traffic plan.

3 But the traffic plan, you know, regardless of what the
4 Bikefest Task Force says, each individual jurisdiction
5 necessarily has to approve it, right? I'm certain that if
6 Chief Prock -- if the Bikefest Task Force said let's put
7 in -- you know, let's eliminate the loop and Chief Prock
8 said, okay, I'll do that, the city council would have
9 something to say about that, right? The city council
10 could say, oh, no, we're doing it, at least within our
11 jurisdiction.

12 So, yes, they can voluntarily get together and,
13 you know, the Bikefest Task Force makes a recommendation.
14 But ultimately, it's clear the ultimate decision makers
15 have to be each one of those local governments. They
16 could not submit themselves to some other jurisdiction to
17 make the decision more --

18 **THE COURT:** But they do have -- those local
19 governments have a role in both the decision that was --
20 that ended up being the plan that was challenged and the
21 enforcement of that. You would agree with that?

22 **MR. COLFAX:** Well, I -- that's what's suggested.
23 But you may have seen in the declaration from Atlantic
24 Beach, I think it was the city manager, he said he had no
25 idea this was happening. Atlantic Beach is supposed to be

1 on the Bikefest Task Force. So again, at this stage of
2 the case, I don't know exactly what happened in those.
3 But I think it's only -- the key here is, ultimately, the
4 City of Myrtle Beach has to decide what it's doing on its
5 roads within its jurisdiction and which it controls. And
6 its officers are the ones that are at all those
7 intersections and along the street within the City of
8 Myrtle Beach. That's their call.

9 **THE COURT:** Okay.

10 **MR. COLFAX:** Ultimately, it's their call,
11 regardless of what the Bikefest Task Force is suggesting.

12 **THE COURT:** Assume hypothetically -- and I know
13 you dispute this, the whole basis is contrary to it, so
14 I'm not in any way -- but as a proposition of law, if
15 there were -- if we were to hypothetically assume that
16 these events were not substantially similar, do the
17 plaintiffs agree that it would be appropriate for the city
18 to regulate them differently?

19 **MR. COLFAX:** If Harley Week and Black Bike Week
20 were not substantially similar?

21 **THE COURT:** Yes, sir.

22 **MR. COLFAX:** Well, certainly, they could
23 regulate them differently. However, they would have to
24 have some more than rational basis, some strong basis for,
25 first, showing they're not similarly situated. And

1 because of the lack of similar situation, here's how we're
2 treating them differently.

3 **THE COURT:** Right.

4 **MR. COLFAX:** There's got to be a link to the
5 difference in how the events are to the difference in
6 terms of the regulations.

7 **THE COURT:** If there is -- hypothetically, if
8 they're different events, is that not an essential element
9 that defeats an equal protection claim?

10 **MR. COLFAX:** Again, it depends on how you
11 measure similarly situated. And what we would argue is
12 that similarly situated has to be viewed within the
13 context of the action being challenged --

14 **THE COURT:** Okay.

15 **MR. COLFAX:** -- right? If there are differences
16 between Black Bike Week and Harley Week, do those
17 differences impact the action challenged in any way or
18 somehow justify the difference in how the two events are
19 being treated?

20 **THE COURT:** When -- I'm getting notes, too.

21 So if you could -- during your presentation,
22 your oral presentation before the witnesses came up, I
23 asked you a couple of questions about the First Amendment
24 claim and I want to follow up on that. Do you contend the
25 loop has an adverse effect on the First Amendment rights

1 or is that the one lane only? Or explain how the loop
2 relates to the First Amendment rights.

3 **MR. COLFAX:** Well, I would say it's both and
4 either effect the First Amendment. Because from the
5 evidence that we saw, both in the time period when there
6 was just the one-way traffic restriction in place as well
7 as the loop in place, it was very difficult for people to
8 travel around Myrtle Beach. They did not want to take
9 their motorcycles out because it was actually bad for
10 their motorcycles. They couldn't actually travel because
11 they had to -- because of this overheating and idling
12 problem. People could not go out to events or celebrate
13 being there in Myrtle Beach because they just didn't want
14 to go outside because they would get stuck in the loop and
15 be stuck in traffic for hours and hours and hours. And
16 that's regardless of whether it's the one-way plan or the
17 loop. So really, what we're talking about is the
18 infringement is that it makes it very difficult to do the
19 activities that are part of the Black Bike Week experience
20 to such an extent that some people don't even travel to it
21 anymore.

22 **THE COURT:** Do you -- I think I referred to this
23 during Mr. Battle's presentation about one of the
24 considerations under some of the law about First Amendment
25 claims is the public perception of the purpose. I asked

1 him if he had any evidence, I think he volunteered that he
2 didn't. I asked him if he was aware of y'all submitting
3 any evidence on that. I don't recall that other than what
4 you submitted from the participants. Is that about -- a
5 fair reading of the record at this point?

6 **MR. COLFAX:** That's a fair reading. I think
7 it's consistent with how these First Amendment cases are
8 generally litigated and resolved is that courts look at
9 the purpose of the participants in the event, whether it
10 be a parade or attending Black Bike Week. And I have not
11 seen cases where there's any sort of analysis of, you
12 know, the actual evidence of how it's perceived from the
13 spectators because, oftentimes, the speech never gets
14 to -- that doesn't actually happen, right? So in the
15 parade, like in the Latino officer's case, they never --
16 they -- until the court case, they didn't get to march in
17 their uniforms because that -- the statute prohibited it.

18 **THE COURT:** But this is different. I mean, we
19 have, as you pointed out, a multi-year history, admittedly
20 in the plaintiff's view diminished of late, but it's been
21 going on. And so anyway, I'm not arguing with you. I
22 just point that -- anyway, that's not a question so I
23 apologize for that.

24 Last point, if the Court were inclined to grant
25 the plaintiff's relief, is the plaintiff prepared to post

1 a bond?

2 MR. COLFAX: I think it would depend on what the
3 bond would be, you know, what the amount would be but,
4 yes, to the extent that that would be necessary. And I
5 think it would have to be linked to something that is
6 actually a cost that may be borne by the city. But they
7 talked about the expenses that they have incurred up to
8 this point, but they haven't -- those expenses are -- have
9 been spent whether the traffic loop is in place or not
10 and, in fact, there are going to be more expenses they
11 stated will come.

12 THE COURT: I didn't mean to interrupt you.
13 I'll ask them their position on the bond, too. But, I
14 mean, the rule I think requires a Court that grants an
15 injunction to assess and address that and post one in
16 accordance with the law. And I just wanted to make sure I
17 understood your position on that. And it may depend on
18 what they say is needed.

19 MR. COLFAX: Right. I guess that's part of my
20 hesitation is not really understanding what the bond would
21 potentially cover in terms of a cost, if they would --
22 because I would imagine it would -- I don't imagine, I
23 know it would be less cost if they put in the non-plan
24 that they have for Harley Week for Black Bike Week.

25 THE COURT: Well, I don't want to speak for

1 them, but they may -- if they view that as insufficient
2 for public safety reasons, they may feel other steps need
3 to be taken. So I don't know. But anyway, I appreciate
4 your responding to my questions.

5 **MR. COLFAX:** Thank you.

6 **THE COURT:** Yes, sir.

7 Mr. Battle, if I could ask you a few? We talked
8 about the -- I don't know if I talked about it with you at
9 all, but Judge Wooten's order from back earlier. And it
10 sounds like neither of y'all were counsel of record in
11 that case, so we're all, I guess, fresh in this one. But
12 it seems to me that by almost necessity, the record that
13 is before this Court at this time, while it may encompass
14 certain parts of the prior record as has been presented,
15 is a different record because we have testimony of people
16 who talked about events since that time. Do you agree
17 it's a different record?

18 **MR. MICHAEL BATTLE:** I agree.

19 **THE COURT:** I want to turn to the stay. How --
20 I was -- I was a little surprised the plaintiffs didn't
21 mention the stay in their briefs and I was a little
22 surprised the city, you know, described it as it had when
23 the order of staying the injunction expressly said it
24 expresses no opinion on the merits. Is it the city's
25 position that when the Court of Appeals expresses no

1 opinion on the merits that it actually did express an
2 opinion on the merits?

3 **MR. MICHAEL BATTLE:** What I intended to say, I
4 may not have communicated it very well, is that they are
5 saying this is not a situation that requires a preliminary
6 injunction from the court, period.

7 **THE COURT:** Okay. Do you -- on the mandatory,
8 prohibitory injunction standard, do you have anymore
9 guidance? And I'm not ruling at this point that this is a
10 mandatory or a prohibitory injunction, that's something
11 we've got to decide.

12 **MR. MICHAEL BATTLE:** Yes.

13 **THE COURT:** But hypothetically, assume I were to
14 agree with the defendant, that it's a mandatory
15 injunction, can you tell me what that is other than to
16 issue it sparingly and use a more seeking eye?

17 **MR. MICHAEL BATTLE:** The reason I say it's the
18 status quo, and I could go back to my --

19 **THE COURT:** I don't need -- I'm not -- I'm
20 sorry, I asked a poor question. I appreciate both sides
21 arguments on why it's a -- why it is and why it is not a
22 mandatory injunction. I didn't mean to ask that question.
23 I'm asking you if it is a mandatory injunction, what's the
24 standard, what's the Court to do different than it would
25 if it was a prohibitory injunction?

1 **MR. MICHAEL BATTLE:** The case I cited stated
2 that if it's a mandatory injunction, the kind of damages
3 that have to be inflicted upon the moving party, the
4 petitioner, have to be, and I'll quote, severe.

5 **THE COURT:** Aren't constitutional violations
6 just inherently severe enough to meet any sort of damages
7 standard?

8 **MR. MICHAEL BATTLE:** If you look at the Memphis
9 vs. Green case --

10 **THE COURT:** Yes, sir.

11 **MR. MICHAEL BATTLE:** -- where they talk about
12 where they took a road, closed it off and prohibited
13 traffic from going through it, they talked about those
14 kinds of damages. The exact same types of damages that
15 these people are describing were described and discussed
16 by the US Supreme Court in that case. And they went on to
17 talk about the quote of the 13th Amendment and the badge
18 of slavery and that sort of stuff. And they said this is
19 not the significant kinds of damages that we're talking
20 about that would justify claiming this is a constitutional
21 amendment -- or a constitutional violation that would
22 justify the kind of interruption or interference from the
23 Court.

24 **THE COURT:** So they said in that case -- and I
25 know the plaintiff pointed out differences in that in the

1 brief. And I'll look at that again. But they pointed out
2 in that case that when -- even in the face of
3 constitutional violations, that that was not enough to
4 justify an injunction in that case?

5 **MR. MICHAEL BATTLE:** That is my reading of it.

6 **THE COURT:** All right. We'll look back at that.

7 Now, the -- is it the city's position that at
8 least since 2008 or '9, the events -- that Bikefest and
9 Harley Week have been different events and not
10 substantially similar?

11 **MR. MICHAEL BATTLE:** Yes. Since 2009, the --
12 for some reason, the Memorial Day Weekend or Black Bike
13 Weekend people were not offended by the helmets, the
14 helmet law. I had to argue that in the Supreme Court.
15 The Harley Week people were very offended by it. You also
16 had the issue of the muffler. And we were doing tests on
17 the Harley Week mufflers and that sort of thing and that's
18 when it changed. It changed drastically then.

19 **THE COURT:** All right. So since '09, the city
20 believes that these -- at least since '09, the city
21 believes these two events have been different, not
22 substantially similar, correct?

23 **MR. MICHAEL BATTLE:** That's correct.

24 **THE COURT:** But isn't it true that from 2009 to
25 2015, the city nevertheless regulated them the same?

1 **MR. MICHAEL BATTLE:** I don't -- I think that
2 they had one-way traffic and the emergency lanes during
3 that time and that's what they needed.

4 **THE COURT:** But whatever it was, it was the
5 same?

6 **MR. MICHAEL BATTLE:** I'll have to check. It was
7 not the same. It was not regulated the same.

8 **THE COURT:** Okay. Maybe that's something we'll
9 develop further. I saw the police chief nodding.

10 **MR. MICHAEL BATTLE:** She knows much better than
11 I do. I wasn't really prepared for that question.

12 **THE COURT:** I can't take a nod as evidence, but
13 I appreciate that being an issue that may be deserves
14 further --

15 **MR. MICHAEL BATTLE:** It's certainly a matter
16 that's sharply contested.

17 **THE COURT:** I think this was discussed by --
18 maybe in direct, but certainly in cross-examination, that
19 there is a -- is there another event in which the city
20 employs a traffic loop of any sort?

21 **MR. MICHAEL BATTLE:** I would say that the
22 traffic loop -- you have a detour. It's not one that goes
23 23 miles. But there are -- we just last -- I say two
24 weeks ago, we had to close down a major portion of Kings
25 Highway for the air show. We had to make detours. A

1 traffic loop is a fancy name for a detour.

2 THE COURT: Well, I guess so in some sense, but
3 in this case, it is a detour, but it also forms a loop
4 that you go around for 23 miles. Is there anything
5 substantially similar to that at any other event the city
6 regulates?

7 MR. MICHAEL BATTLE: Not a 23-mile loop. And
8 let me speak a moment about why it's 23 miles.

9 THE COURT: Okay.

10 MR. MICHAEL BATTLE: What's in the city is the
11 6.5-mile control road.

12 THE COURT: Right.

13 MR. MICHAEL BATTLE: They have -- when you get
14 outside of the city or where the people go after they get
15 into the loop, there was much debate and discussion
16 amongst the Bikefest Task Force participants. Surfside
17 did not want to have that traffic dumped into Surfside.
18 North Myrtle Beach did not want the traffic dumped into
19 North Myrtle Beach. Horry County did not want the traffic
20 dumped into Horry County. So that was the decision that
21 was made -- came about as a result of the planning of the
22 parties. It also seemed to be the one that best
23 accommodated the traffic and allowed people to get
24 anywhere within the city that they needed to get without
25 encountering the loop.

1 **THE COURT:** It was talked about, I think, by one
2 of the city witnesses that the city proposed a different
3 loop than the one --

4 **MR. MICHAEL BATTLE:** I said that.

5 **THE COURT:** You said that? What did the city
6 propose?

7 **MR. MICHAEL BATTLE:** They proposed a loop that
8 would be going more towards North Myrtle Beach and then
9 coming back. And it was rejected. I'm not familiar with
10 the details of it. It may have been a longer loop. I
11 think it may have been a longer loop, candidly. But it
12 was -- my point in making that argument is that the
13 Bikefest Task Force is the one that chose the loop and
14 made the decision. It wasn't just the city. Now, the
15 city is a member and certainly has influence. But as far
16 as the ultimate decision, we agreed to work with everybody
17 else.

18 **THE COURT:** There was -- I read, I think, about
19 someone maybe proposing a 40-mile loop and someone
20 proposing a nine-mile loop. Did the city -- was that in
21 the part of the discussion?

22 **MR. MICHAEL BATTLE:** Yes, sir, that was
23 considered by the Bikefest Task Force. I think the
24 nine-mile loop may have been proposed by Chief Williams.

25 **THE COURT:** Okay. I got you. That was -- that

1 makes sense with what he's testified to earlier.

2 Before 2009, do you know the way in which Harley
3 Week was regulated from a traffic standpoint?

4 **MR. MICHAEL BATTLE:** I wasn't involved in
5 regulating -- I do know what the ordinances were there. I
6 do know that there were issues I think that -- the main
7 thing that I can recall about that area in that time was
8 that at all times, they had a two -- I mean, a one-way
9 traffic for both weeks. There were emergency lanes. Now,
10 the number of police and what took place and that sort of
11 thing, I don't know. But what the plaintiff seeks to
12 have -- do away with what was in place.

13 **THE COURT:** Is it -- does the city contend or
14 believe that before the boycott, if that's the right word,
15 in '09 by participants in Harley Week, that Bikefest and
16 Harley Week were more similar?

17 **MR. MICHAEL BATTLE:** I think you had more
18 participation of bikers on Ocean Boulevard during that
19 time. I don't -- I don't have access -- and that brings
20 up an excellent point that I would like to make that I
21 think you're aware of. We haven't had a chance to do the
22 discovery on that. I haven't had a chance to go back.
23 And those things are important.

24 **THE COURT:** You could have -- and you've said
25 that. And I don't mean to be too critical, but I've had

1 injunction cases and I've seen motions for expedited
2 discovery. And I don't know that anyone's made that
3 request, have they?

4 **MR. MICHAEL BATTLE:** No, sir, we didn't know
5 that the -- until last week when we talked that we were
6 going to have the hearing before the weekend.

7 **THE COURT:** Well, that's fair. Y'all have been
8 moved around. I'm not -- like I say, I'm not trying to be
9 critical. But --

10 **MR. MICHAEL BATTLE:** I understand. We would
11 like to go ahead and get the discovery done and do that
12 stuff. And we are in the process of hiring experts and
13 analysts to try and come up with more answers for the
14 Court.

15 **THE COURT:** I appreciate that.

16 **MR. MICHAEL BATTLE:** We're not simply pushing it
17 aside and saying this is just -- what we're concerned
18 about is a preliminary injunction of an event that's going
19 to take place in two and a half weeks.

20 **THE COURT:** And I appreciate that issue. You
21 briefed that and that's --

22 **MR. MICHAEL BATTLE:** I'm sorry.

23 **THE COURT:** No, no, I'm not being -- I'm not
24 trying to be dismissive of that. Both sides have, I
25 think, issues that are valuable and important. So I

1 acknowledge that.

2 Now, what's the city's position on if the Court
3 were to grant an injunction, should a bond be issued? If
4 so, what amount? And what's that amount based on?

5 **MR. MICHAEL BATTLE:** All right. We have spent
6 \$305,000 in equipment purchases. We have already reserved
7 hotel rooms for all these outside police officers to come
8 in, and we have them coming in. And we would be in a
9 better -- I mean, we would really have to scramble to
10 figure out any way to try to make the event safer.

11 **THE COURT:** Well, that's -- that point, I
12 understand. That's a -- to me deals with maybe the
13 balance of the equities and the public interest issues for
14 the Court to consider.

15 **MR. MICHAEL BATTLE:** Sure.

16 **THE COURT:** I think that's a legally different
17 issue than a bond. Is there a bond that the city believes
18 would be appropriate if the Court were inclined to grant a
19 motion? And what would that be based on?

20 **MR. MICHAEL BATTLE:** What we would have to do is
21 to -- I mean, it would certainly be in excess of the money
22 we've already expended in terms of the equipment that
23 we've purchased and what we've gotten ready for, in that
24 amount. We feel like that that would be, more or less,
25 set aside. And then if we were to prevail and say, yeah,

1 ultimately, on the merits, which we believe we will, then
2 you have that, you have the -- how can you measure the
3 delegitimization of government and a failure along those
4 lines in terms of as a damage. If the preliminary
5 injunction doesn't make any findings of fact, doesn't make
6 any conclusions of law, simply says based on what I've
7 heard so far, I think you're wrong, and then it turns out
8 the judge happens to be incorrect, what sort of -- how
9 would you go about making a reparation for that?

10 **THE COURT:** I'm not arguing that point. I'm
11 just trying to decide -- one of the things we've got to
12 consider, among all these things, is whether, if we do it,
13 we issue -- we order a bond to be in place.

14 **MR. MICHAEL BATTLE:** Yes, sir.

15 **THE COURT:** And your points, I've understood
16 those. I think they may go to whether or not we should
17 grant the motion or not. But I'm just trying to hear you
18 out on the bond. And I think I understand. That's
19 probably a hard thing in a case like this. And I think --

20 **MR. MICHAEL BATTLE:** I would leave that to your
21 sound discretion bearing in mind the amount we've already
22 spent.

23 **THE COURT:** Yes, sir. Last thing I want to
24 explore is Ordinance 19-178, which is headed, The City May
25 Declare an Extraordinary Event. Certain events are

1 declared. Are you familiar with that ordinance?

2 **MR. MICHAEL BATTLE:** Yes, sir, I am.

3 **THE COURT:** Subsection B refers to the Bikefest
4 week. You know, people use different names for it, but
5 that appears to be what is designated by Subsection E.
6 And it says, The Bikefest may be declared an emergency
7 event. Is that your understanding?

8 **MR. MICHAEL BATTLE:** Yes, sir.

9 **THE COURT:** Has it been declared an emergency
10 event?

11 **MR. MICHAEL BATTLE:** No, sir.

12 **THE COURT:** It has not?

13 **MR. MICHAEL BATTLE:** Not to my knowledge. I
14 think that would require some act -- it has been declared
15 an emergency event. I'm sorry. It has been.

16 **THE COURT:** Okay.

17 **MR. MICHAEL BATTLE:** I'm just familiar with
18 drafting the ordinance. I can tell you why they've had
19 that ordinance.

20 **THE COURT:** Well, I'm not interested in -- I
21 mean, I am interested in that. But for right now, I mean,
22 that ordinance hasn't been as much of the focus as the
23 plan. Of course, it's the event that -- you know, I guess
24 it's the ordinance that authorizes in part the city to
25 participate in the decision about the plan.

1 Do you know, Mr. Battle, the criteria that were
2 considered in -- and if you want to go confer with your
3 co-counsel. I don't really want to get a lot more
4 testimony because I restricted that. And if I have a hole
5 in the record, I have a hole in the record on this. But I
6 mean, do you know the criteria that were used to -- when
7 Bikefest -- first of all, when was Bikefest declared an
8 emergency event? Was that a one-time event or is that
9 done every year? And what are the criteria that are used
10 to -- for it to be so declared?

11 **MR. MICHAEL BATTLE:** I believe the criteria are
12 set forth in the ordinance itself.

13 **THE COURT:** Subsection A?

14 **MR. MICHAEL BATTLE:** Yes, sir.

15 **THE COURT:** Okay. The city doesn't contend,
16 does it, that Bikefest inherently is an emergency event?
17 It has to apply the criteria to it, do you agree with
18 that?

19 **MR. MICHAEL BATTLE:** Yes, sir, based on past
20 experience, I mean, this is -- what makes this an
21 extraordinary event is we have no way to know what is
22 coming.

23 **THE COURT:** I understand.

24 **MR. MICHAEL BATTLE:** There is not a special
25 event where we have permits and we have private security

1 guards and all those sorts of things. This is something
2 where it may develop to be an extraordinary event,
3 emergency-type situation. But we prepare for the worst
4 and hope for the best.

5 **THE COURT:** I understand.

6 Okay. All right. I want to thank everyone here
7 for coming today. As I said earlier, I want to thank
8 y'all for being prepared. This was very well presented.

9 I want to thank you for your professionalism.
10 This is an issue that, you know, plaintiffs have very
11 strong feelings about, the defendants have strong feelings
12 about. And y'all have displayed and argued your positions
13 I think well and with civility and professionalism, which
14 is kind of a hallmark of the bar up here. And we're glad
15 to see it's a hallmark of other parts of the profession.

16 I am -- we know this event is coming up. So we
17 know we've got work to do and got work to do quick. And
18 we're going to undertake to do that. And we're going to
19 take this under advisement.

20 But we will issue an order as soon as we can. I
21 can't give you an exact deadline, but we're going to try
22 to do it quickly. We know, you know, time is of the
23 essence in getting a decision to both parties.

24 So I want to thank you. And we'll be in touch
25 with an order as soon as we can. Thank you very much.

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MR. COLFAX: Thank you, Your Honor.

MR. MICHAEL BATTLE: Thank you, Your Honor.

(WHEREUPON, court was adjourned at 5:28 p.m.)

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

s/Karen E. Martin

5/14/2018

Karen E. Martin, RMR, CRR

Date _____

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

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